

# WORKERS' COMPENSATION ANNUAL REPORT

FISCAL YEAR 2016



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FISCAL YEAR 2016

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Montana Department of Labor & Industry  
Employment Relations Division  
Workers' Compensation Claims Assistance Bureau  
PO Box 8011, Helena, MT 59604

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Montana Department of  
**LABOR & INDUSTRY**

## LETTER FROM THE COMMISSIONER

Dear Colleagues and Fellow Montanans,

As Commissioner for the Montana Department of Labor & Industry, it is my privilege to present the Workers' Compensation Annual Report for Fiscal Year 2016 to you and the citizens of Montana, and stakeholders in our state's workers' compensation system. The collection and analysis of accurate data is essential to understand Montana's current work environment. This report, created by the Employment Relations Division (ERD), provides stakeholders greater insight regarding evolving trends, workers' compensation developments, and to help maintain and enhance an efficient, effective program.

One of the pre-reform (HB334 - 2011) cost drivers identified was Montana's high incidence rate of non-fatal work-related injuries and illnesses, which measures the rate at which workers are injured each year while on the job. In 2015, Montana had the fourth highest incidence rate of non-fatal work-related injuries and illnesses in the U.S. (4.3 cases per 100 full-time workers). In an effort to reduce injury rates and promote safe work environments throughout the state, stakeholders continue to focus on safety and education. Our goal is to make sure every Montanan comes home to their loved ones safely after their shift ends.

The Department annually hosts four SafetyFestMT events across Montana to provide safety education at no cost to over 1,300 Montana workers. The Safety Bureau also held 160 OSHA 10-Hour classes for 1374 students across the state this past year.

The Employment Relations Division organized the annual Governor's Conference on Workers' Compensation and Occupational Safety and Health. During the 2016 event, three employers were the proud recipients of the Governor's Safety Achievement Award. In addition to safety initiatives, the Department actively promotes the Stay-at-Work/Return-to-Work program at several of the stakeholder outreach meetings across the state. The program has received very positive feedback from participants.

The Employment Relations Division received a grant from the National Institutes for Occupational Safety and Health (NIOSH) and began implementing an occupational health and injury surveillance program in 2016. The program mission, Montana Occupational Health Safety and Surveillance (MOHSS), is to identify, track, and monitor work-related fatalities, injuries, and illnesses in order to improve worker health and safety across Montana. Additional program details are available at [www.mtworkerhealth.com](http://www.mtworkerhealth.com).

The Labor Management Advisory Council (LMAC) continues to provide an essential forum for the discussion and debate of important workers' compensation and safety issues. During the 2017 Montana Legislature, the council provided leadership and advice on several pieces of legislation pertaining directly to workers' compensation, including SB 312 allowing the Department to adopt a drug formulary. The LMAC believed that the implementation of a drug formulary, used in conjunction with utilization and treatment guidelines, would be an additional tool for providers addressing the opioid crisis and improve injured worker outcomes.

There is so much more to share about our workers' compensation system than I can provide you in this brief introduction. I trust that you will find the enclosed report valuable in developing a deeper understanding of the trends and activities taking place in Montana's workers' compensation system and the positive results that come from the collaborative efforts of all stakeholders.



Sincerely,

A handwritten signature in blue ink that reads "Pam Bucy".

Pam Bucy, Commissioner



Montana Department of  
**LABOR & INDUSTRY**

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## WORKERS' COMPENSATION HIGHLIGHTS

In an effort to reduce costs to employers, provide appropriate benefits to injured workers, and reduce or eliminate work place injuries, the Employment Relations Division (ERD), monitors workers' compensation medical costs, costs associated with lost work time, claim rates, system and administrative costs, safety and education activities, and all other aspects of the Montana workers' compensation system.

This report will provide the reader with an assessment of Montana's workers' compensation system, including system updates and legislative changes, claims and benefits characteristics, dispute resolution outcomes, and Department programs and their functions.

### WORKERS' COMPENSATION CLAIM HIGHLIGHTS:

- Reported claims decreased 2% from 25,499 claims in FY15 to 25,006 in FY16;
- The most frequent causes of injury were strains (32%) and falls, slips, and trips (21%);
- The most frequent natures of injury were sprains and ruptures (41%) and cuts and abrasions (21%);
- The most frequent body parts injured were upper extremities (32%) and the back (16%);
- Total benefits increased by 10% from FY15 to FY16. Medical benefits increased by \$13 million, which is most likely due to the increase in settlement of future medical benefits, and Indemnity benefits increased by \$8 million;
- Medical benefits comprised 67% of payments and indemnity payments 33%;
- The share of Permanent Partial Disability (PPD) payments has been declining since HB334;
- Temporary disability paid duration (TTD and TPD) (1-year maturity) has continued to decline; and
- Approved settlements of future medical benefits for 'best interest' increased in utilization from 610 in FY15 to 886 in FY16 and back down to 548 in FY17.

### EMPLOYMENT RELATIONS DIVISION ACTIVITIES IN FY16:

- Organized and held the annual Governor's Conference on Workers' Compensation and Occupational Safety and Health at Big Sky, attended by 247 stakeholders;
- Made presentations on workers' compensation, safety, and stay at work/return to work at Assistance for Business Clinics across the state;
- Held SafetyFests in Missoula (589 attendees), Bozeman (263 attendees), Miles City (185 attendees), and Great Falls (269 attendees);
- Provided staff support and research for the Labor-Management Advisory Council (LMAC);
- Published the FY15 Workers' Compensation Annual Report;
- Implemented the occupational health and injury surveillance grant from the National Institutes for Occupational Safety and Health (NIOSH);
- Participated in the International Association of Industrial Accident Boards and Commissions (IAIABC) committees, including: EDI Council, EDI Claims, Research & Standards, Medical Issues, Regulations, and Disability Management; and
- Participated in the National Institute for Occupational Safety and Health (NIOSH) and Council of State and Territorial Epidemiologists (CSTE) health surveillance committee.

# 2017 Montana Legislative Summary

## Section 1

- House Bill 346
- House Bill 449
- Senate Bill 142
- Senate Bill 275
- Senate Bill 312
- Senate Joint Resolution 27





The bills passed by the 2017 Montana Legislature relating to workers' compensation are summarized below:

### HOUSE BILL 346

#### **REVISES WORKERS' COMPENSATION LAWS TO RECOGNIZE CERTAIN FISCAL AGENTS AS EMPLOYERS**

The definition of "Employer" in 39-71-117 now includes approved and authorized fiduciary, agent, or other person acting as fiscal agent. A qualifying fiscal agent that is designated as a payor, using federal, state, or local government funds is considered the employer for the purposes of the Workers' Compensation Act of those workers for whom the fiscal agent is making payments. The client of the fiscal agent, despite exercising control over the hiring, scheduling, and direction of the work tasks performed by the worker, is not the employer of that worker for the purposes of the Workers' Compensation Act. The intent was to help veterans who self-direct care to save on workers' compensation costs by having one entity combine and pay for workers' compensation coverage.

### HOUSE BILL 449

#### **REVISES THE DEFINITION OF "WAGES" IN WORKERS' COMPENSATION AND THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL**

Wages now include lodging, rent, or housing if it constitutes a part of an employee's remuneration, based on a value set by administrative rule. The values set by administrative rule must address the general geographic proximity to available housing and may consider other reasonable factors that affect value.

### SENATE BILL 142

#### **REQUIRES NOTIFICATION TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL TECHNICIAN, IF WORKERS' COMPENSATION COVERAGE IS NOT PROVIDED**

An employer not providing workers' compensation coverage for volunteer firefighters or ambulance service workers must notify their employees, annually, that coverage is not provided.

### SENATE BILL 275

#### **DEFINES "CONSTRUCTION INDUSTRY" IN THE WORKERS' COMPENSATION CONSTRUCTION PREMIUM CREDIT PROGRAM, AMENDS SECTION 39-71-2211, MCA, EFFECTIVE IMMEDIATELY**

The construction industry, in workers' compensation, is defined by the classification codes included in advisory organizations construction group, filed with and approved by the insurance commissioner. Creates uniformity for Montana State Fund and Private Insurers.

### SENATE BILL 312

#### **ALLOWS THE DEPARTMENT TO ADOPT A DRUG FORMULARY**

The department may adopt an evidence-based commercial or other evidence-based drug formulary as part of the current utilization and treatment guidelines and the commercial formulary updates during the year. There must be an appropriate transition of treatment, for legacy claims and a timely and responsive dispute resolution process for disputes related to the use of the formulary.

### SENATE JOINT RESOLUTION 27

#### **A STUDY OF THE MONTANA STATE FUND AND OPTIONS FOR PROVIDING WORKERS' COMPENSATION INSURANCE IN MONTANA**

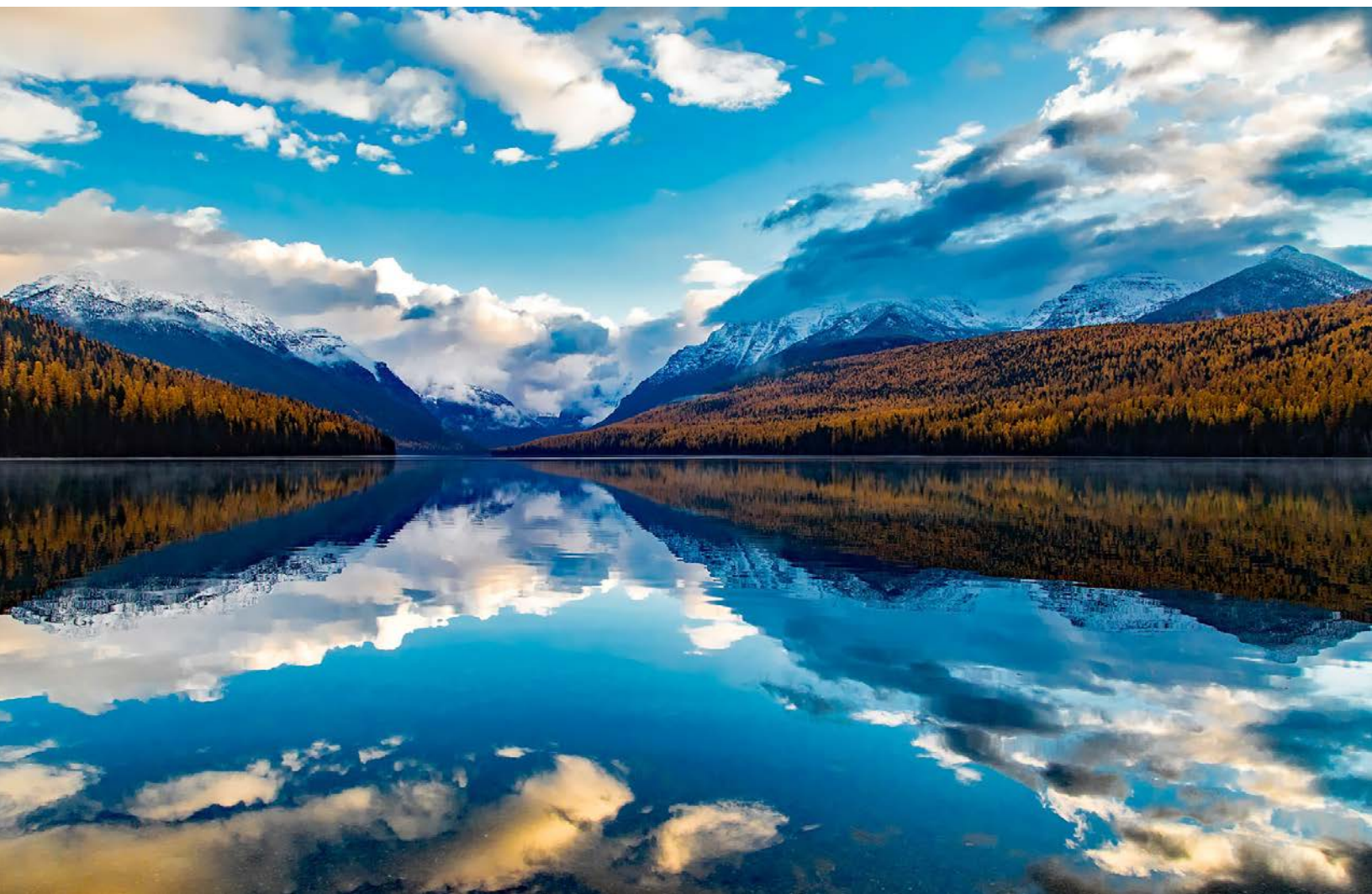
This joint resolution tasks the Economic Affairs Interim Committee with studying the role and costs of the Montana State Fund in providing the guaranteed market in Montana and alternate options available for providing workers' compensation insurance in the most cost-efficient way and best interest of the state, Montana employees, and employers. The results of the study including findings, conclusions, and/or recommendations will be reported to the 2018 legislature.

# Montana Worker's Compensation System

Section

2

- Declaration Of Public Policy
- Labor-Management Advisory Council
- Insurance Coverage Requirements
- Life Of A Claim
- Workers' Compensation Market



## DECLARATION OF PUBLIC POLICY

It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage loss and medical benefits to a worker suffering from a work-related injury or disease. Wage loss benefits are not intended to make an injured worker whole, but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

It is the intent of the legislature to assert that a conclusive presumption exists which recognizes that a holder of a current, valid independent contractor exemption certificate issued by the Department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of workers' compensation unless the person elects personal coverage under one of Montana's three options for workers' compensation insurance.

A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Montana's workers' compensation and occupational disease insurance system is intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

Title 39, chapter 71, MCA must be construed according to its terms and not liberally in favor of any party.

The legislature's intent regarding stress claims, often referred to as mental-mental claims and mental-physical claims, is not to provide for compensation under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system. (§39-71-105, MCA)

The Labor-Management Advisory Council (LMAC) is commissioned by the Department of Labor and Industry to provide a structure for organized discussion of workers' compensation policy and monitor the effectiveness of existing reforms. LMAC gathers information, furnishes advice, and makes recommendations on workers' compensation to the Commissioner in order to improve the workers' compensation system in Montana. LMAC is chaired by the Lieutenant Governor and is composed of employers and labor representatives.

During the 2017 legislative session the LMAC met weekly to discuss workers' compensation bills. One of the bills developed and supported by the LMAC, SB 312, authorizes the department to develop a drug formulary for workers' compensation. The bill received broad bi-partisan support by the Legislature and was signed by Governor Bullock on May 22, 2017. Other discussions in 2016 included presentations on assaults on healthcare workers and workplace safety for healthcare workers, stay at work/return to work, subrogation, and the medical benefit re-opening process.

LMAC meetings are open to the public and public comment is encouraged. For more information on the council, visit: <http://www.mtlmac.com>.



# INSURANCE COVERAGE REQUIREMENTS

If you are an employer or an employee, the Workers' Compensation and Occupational Disease Acts apply. An employer who has an employee in service under any appointment or contract of hire, expressed or implied, oral or written, must elect to be bound by the provisions of compensation Plan 1 (self-insured), Plan 2 (private insured), or Plan 3 (Montana State Fund).

**This information is intended to be descriptive. It is not all inclusive, nor is it intended to be used for legal determination of the mandatory coverage requirements.** Please contact The Employment Relations Division at 406-444-0564, or your workers' compensation insurer, concerning coverage requirements and/or excluded or exempted employments.

## EXTRATERRITORIAL EXCLUSION

### **Employer option for extraterritorial coverage §39-71-442, MCA:** (1) Notwithstanding §39-71-118(8)

(a) an employee of an employer in this state who is employed by the employer to work solely in North Dakota, and who is required by the laws of that state to be covered for workers' compensation purposes while working in that state, is not considered to be an employee in this state covered under Title 39, chapter 71, during any time that the employer maintains workers' compensation coverage for the employee in North Dakota. For purposes of this section, "work solely in North Dakota" means the employee does not perform job duties in Montana and coverage is required by the state of North Dakota. Travel that is commuting to and from a job site in North Dakota from a location in Montana does not constitute performing job duties in Montana even if the employer pays for all or a portion of the costs of travel or if the worker is paid for the travel time.

## OTHER EXCLUSIONS

The Workers Compensation Act may exclude from the definition of employee the services listed below:

- Volunteers
- Volunteers at recreational facilities receiving no compensation other than meals, lodging, or the use of the recreational facilities
- Licensed foster parents providing care for no more than 6 foster children without wage compensation
- Farm-owner occasionally assisting his or her neighboring farmers

(§39-71-118, MCA)

# INSURANCE COVERAGE REQUIREMENTS

## EMPLOYMENTS EXEMPTED

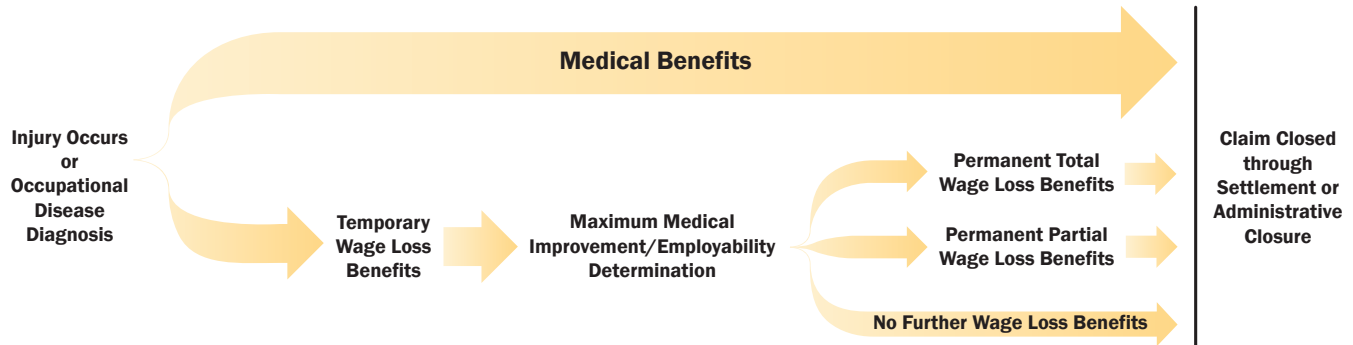
The Workers' Compensation Act may not apply to the employments listed below:

- Household or domestic employment;
- Casual employment;
- Dependent member of an employer's family for whom an exemption may be claimed by the employer under the Federal Internal Revenue Code;
- Sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company;
- Real estate, securities or insurance salesperson paid solely by commission without a guarantee of minimum earnings;
- A direct seller;
- Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- A person performing services in return for aid or sustenance only, except employment of search and rescue volunteers;
- Employment with a railroad engaged in interstate commerce, except railroad construction work;
- An official, including a timer, referee, umpire or judge, at a school amateur athletic event;
- A person performing services as a newspaper carrier or freelance correspondent if acknowledged in writing that the services are not covered;
- Cosmetologist's services and barber's services;
- A person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the reservation;
- A jockey who is performing under a license issued by the Board of Horse Racing, from the time the jockey reports to the scale room prior to a race, through the time weighed out, and has acknowledged in writing that the jockey is not covered while performing services as a jockey;
- Trainer, assistant trainer, exercise person or pony person who is providing services under the Board of Horse Racing while on the grounds of a licensed race meet;
- An employer's spouse;
- A petroleum land professional;
- An officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company;
- A person who is an officer or a manager of a ditch company;
- Service performed by an ordained, commissioned or licensed minister of a church;
- Providers of companionship services or respite care, if a family member or legal guardian employs the person providing care;
- A person performing services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meet the definition of a broker or freight forwarder;
- A person who is not an employee or worker in Montana;
- Independent contractors who are working under a current, valid, independent contractor exemption certificate from the Department;
- An athlete employed by or on a team or sports club engaged in a contact sport; and
- A musician performing under a written contract.

(§39-71-401, MCA)

Exhibit 2.1

### Highlights of a Compensable Wage Loss Claim



Workplace injuries and illnesses do happen and when a Montana employee files a workers' compensation claim, the process that is followed and the actions taken are directed by statute and administrative rule. Medical and indemnity (or wage loss) benefits due an injured worker are determined by the statutes in effect at the time of injury. The key requirements and benefits of a recent, typical Montana workers' compensation claim are generally described below. The benefits payable on a claim depend on the facts of each claim, and the statutes in effect on the date of injury.

### REPORTING REQUIREMENTS

When an injury occurs, the injured worker (claimant) or their authorized representative has 30 days from the date of injury to notify the employer or the insurer (§39-71-603, MCA).

The employer then has 6 days from the date of notification of an accident, injury or occupational disease to report the injury to the insurer or the Department (§39-71-307, MCA).

The claimant or the claimant's representative has 12 months from the date of injury to file a claim, (§39-71-601(1), MCA), or 12 months from the date the claimant knew or should have known of an occupational disease (§39-71-601(3), MCA).

The claim filing time can be extended up to an additional 24 months if it can be proven that the worker was somehow prevented from filing the claim because of something the employer or the insurer said or did, or if the injury was latent or the worker lacked knowledge of disability (§39-71-601(2), MCA).

The signed claim form or First Report of Injury and Occupational Disease (FROI) (form ERD-991) can be submitted to the employer or sent directly to the insurer or the Department (§39-71-601(1), MCA).

The insurer shall accept or deny a claim within 30 days of receipt of a signed claim for compensation by the claimant or the claimant's representative (§39-71-606(1), MCA). If the claim is denied, the insurer shall provide a written statement of the reasons for denial, along with a written explanation of the appeal process (§39-71-107(6), MCA).

If the insurer needs more than 30 days to investigate the claim, the insurer may, with proper written notice, pay wage loss and/or medical benefits without such payment being an indication of admission of liability or waiver of any right of defense (§39-71-608 and §39-71-615, MCA).

Prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and providers. All workers' compensation claims must be examined by a claims examiner located in Montana. An insurer shall provide a claimant a written notice advising the claimant when a change is made to the claims examiner handling the claim, including the name and contact information of the new claims examiner (§39-71-107(6)(d), MCA). An insurer that uses a third party claim administrator to provide the insurer with claim examination services shall notify the department in writing of a change of the claim administrator at least 14 days in advance of the change. The department may assess a penalty for failure to comply (§39-71-107(1), (2), and (4), MCA).

### MEDICAL BENEFITS

For dates of injury (dates of loss) prior to July 1, 2011, in addition to using an emergency room or urgent care center, the claimant has the right to select the first treating physician (within the treating physician definition). The insurer must then approve changes of treating physicians. The insurer has the right to deny payment for any unauthorized medical referrals and treatments (§39-71-1101, MCA, and ARM 24.29.1510).

For dates of loss July 1, 2011 and thereafter, the claimant may choose the treating physician for initial treatment. Any time after acceptance of liability the insurer may designate a different treating physician (within the treating physician definition) or approve claimant's choice of the treating physician. The designated treating physician agrees to be responsible for coordination of care, timely workability determinations, treatment under the Utilization and Treatment Guidelines (U&T Guidelines) or prior authorization from the insurer, and referral to other health care providers.

Medical providers bill the insurer directly. Payment is made according to a fee schedule (§39-71-704(2) and (3), MCA). The medical provider must accept the fee scheduled reimbursement as payment in full, and the claimant is not responsible for any balance.

The insurer is responsible for reasonable primary medical services, for conditions that are a direct result of the compensable injury or Occupational Disease (OD). An insurer is not responsible for treatment or services outside the U&T Guidelines, unless authorized by the insurer prior to the treatment or procedure (§39-71-704(1) and (3), MCA).

For dates of loss prior to July 1, 2011, the claimant is responsible for payment of: (1) unauthorized treatment, (2) medical care not related to the injury, (3) medical services if treatment is not received for 60 months, (4) secondary medical services and palliative or maintenance care unless specifically covered, and (5) medical procedures specifically excluded (§39-71-704, MCA and ARM 24.29.1401).

For dates of loss of July 1, 2011 and thereafter, the claimant is responsible for payment of: (1) medical care not related to the injury, (2) medical services provided 60 months or more after the date of injury or diagnosis of an OD unless medical benefits are reopened, or the claimant is deemed permanently totally disabled, (3) secondary medical services and palliative or maintenance care unless specifically covered, and (4) medical procedures specifically excluded (§39-71-704, §39-71-717, MCA, and ARM 24.29.1401).

For dates of loss prior to July 1, 2011, medical benefits terminate when not used for a period of 60 consecutive months. The insurer may not be required to furnish palliative or maintenance care after the claimant has achieved Maximum Medical Improvement (MMI) (§39-71-704, MCA).

For dates of loss July 1, 2011 and thereafter, medical benefits terminate 60 months after the date of injury or the date of diagnosis of an OD, unless the claimant is deemed permanently totally disabled, or the medical benefits are reopened. A worker may request reopening of terminated benefits within 5 years of termination. The request can be made by contacting the Claims Assistance Bureau at (406) 444-6543. The insurer may not be required to furnish palliative or maintenance care after the claimant has achieved MMI (§39-71-704 and §39-71-717, MCA).



### INDEMNITY OR WAGE LOSS BENEFITS

The first 4 days or 32 hours (whichever is less) of total wage loss is not compensable. For dates of injury on or after July 1, 2011, if the worker is totally disabled and unable to work in any capacity for 21 days or longer, compensation must be paid retroactively to the first day of total wage loss. Temporary Total Disability (TTD) benefits are based on 66 2/3% of the claimant's average weekly gross wages, subject to a maximum of the state's average weekly wage, and are paid bi-weekly until the claimant returns to work or has reached MMI (§39-71-701 and §39-71-740, MCA).

A claimant cannot use sick leave and receive wage loss benefits at the same time except each day of sick leave may be counted as one day toward the 4-day waiting period. If the claimant becomes entitled to receive retroactive compensation benefits, the claimant may either repay the employer for the sick leave received, or waive the retroactive payment. Receiving vacation leave or paid time off, other than sick leave, may not affect the claimant's eligibility for TTD benefits. (§39-71-736, MCA).

If prior to attaining MMI and due to medical restrictions, the claimant returns to work at less than the wages received at the time of injury, they may be entitled to Temporary Partial Disability (TPD) benefits. TPD is paid until the claimant returns to work without a wage-loss or reaches MMI (§39-71-712, MCA).

If after reaching MMI, the claimant has a residual impairment greater than zero and a wage loss, the insurer is required to pay out the Permanent Partial Disability (PPD) liability bi-weekly, unless the claimant requests a lump sum payment (§39-71-703 and §39-71-741, MCA).

PPD benefits may be payable, based on extent of the impairment, the claimant's age, and education, wage-loss and work capacity restrictions. The benefit amount is determined by the specifics of each individual case, and the statutory language in effect on the date of injury (§39-71-703, MCA).

If the worker is precluded from returning to the job they held at the time of injury and suffers an actual wage loss or has an impairment of 15% or greater, the worker is eligible for vocational rehabilitation services.

In these situations, the insurer designates a vocational rehabilitation provider and vocational rehabilitation services are provided to the claimant as soon as possible. If a rehabilitation plan is established which indicates some type of retraining, the claimant may be eligible to receive monies for tuition, fees, books and other reasonable and necessary retraining expenses. The worker may also receive up to 104 weeks of bi-weekly benefit payments based on the TTD rate (§39-71-1006, MCA). Financial assistance may also be available for reasonable travel and relocation for training and job-related expenses, subject to a maximum amount of \$4,000 (§39-71-1025, MCA).

If the claimant is deemed to be Permanently Totally Disabled (PTD), benefits can continue until the claimant reaches retirement age (§39-71-710, MCA).

## WORKERS' COMPENSATION MARKET

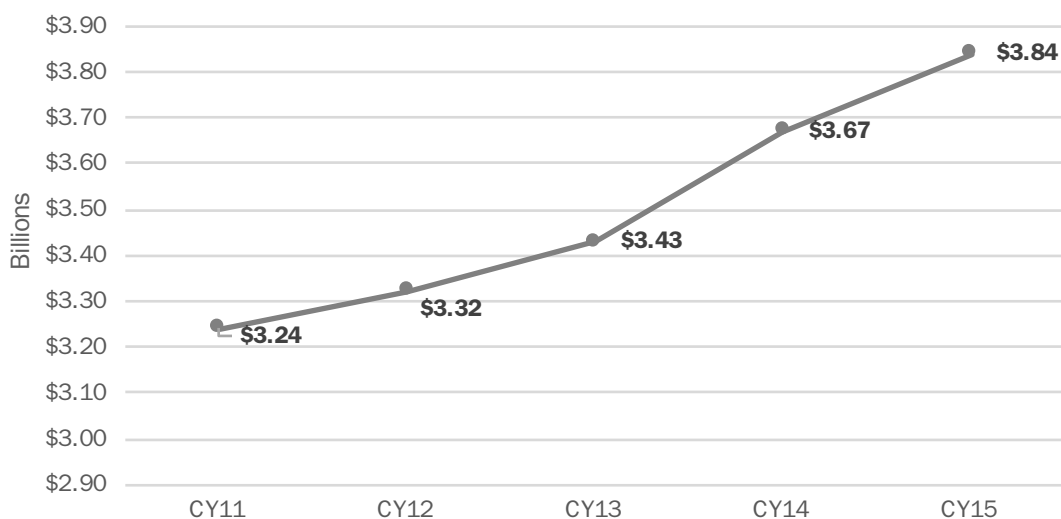
Montana employers have three options for securing workers' compensation coverage for their employees. Employers that meet the Department's financial requirements may opt to become self-insured (Plan 1), either individually or by joining with other employers in their industry to form a self-insured group. Employers may also obtain coverage with private

insurance companies (Plan 2) in the voluntary market. Finally, employers can insure through Montana State Fund (Plan 3). Montana State Fund's role as the guaranteed market provides assurance that all Montana employers can provide workers' compensation insurance coverage for their employees.

Exhibit 2.2

### Gross Annual Payroll - Self Insured

By Calendar Year



## WORKERS' COMPENSATION MARKET

Exhibit 2.3

### Premium Market Share – Private Insured and State Fund

By Calendar Year and Plan

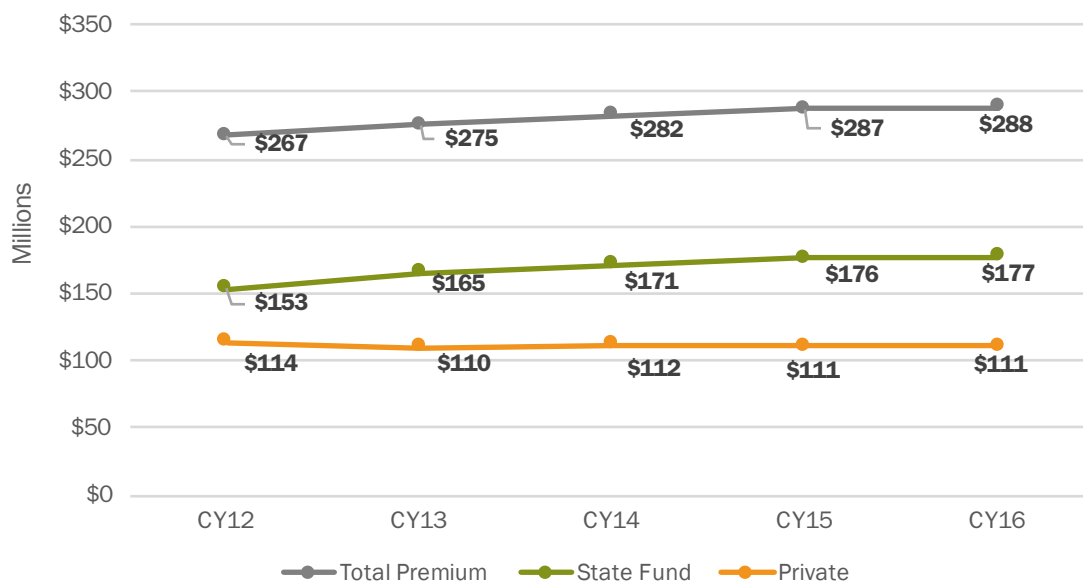


Exhibit 2.4

### Premium Market Share – Private Insured and State Fund

By Calendar Year and Plan

	CY12		CY13		CY14		CY15		CY16	
Plan Type	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Private	\$113,744,533	43%	\$109,737,052	40%	\$111,583,813	40%	\$110,739,098	39%	\$111,254,621	39%
State Fund	\$153,423,174	57%	\$165,398,283	60%	\$170,881,461	60%	\$175,962,428	61%	\$177,245,314	61%
<b>Total</b>	<b>\$267,167,707</b>	<b>100%</b>	<b>\$275,135,335</b>	<b>100%</b>	<b>\$282,465,274</b>	<b>100%</b>	<b>\$286,701,526</b>	<b>100%</b>	<b>\$288,499,935</b>	<b>100%</b>

# Claim Statistics

## Section 3

- Claim Rates
- Claims By Plan Type
- Injured Worker Characteristics
- Insurer Denial Of Claims





## CLAIM RATES

The overall rate of claims per total workers in Montana for FY16 was 5.7 per 100 workers, which was a decrease from the previous claims rate of 5.9 in FY15. The claims rate has been decreasing since FY12.

Golden Valley, Petroleum, and Treasure counties had the lowest number of claims per county, but these counties had the highest rates of claims per total workers (Golden Valley: 20.4 claims per 100 workers; Petroleum: 17.9; Treasure: 10.6).

Powell, Jefferson, Toole, Choteau, Deer Lodge, Pondera, and Mineral counties also had high rates of claims per total workers, but these counties are also home to large numbers of high-risk employers. These include lumber mills, prisons, correctional facilities, mines, oil and gas extraction operations, foundry

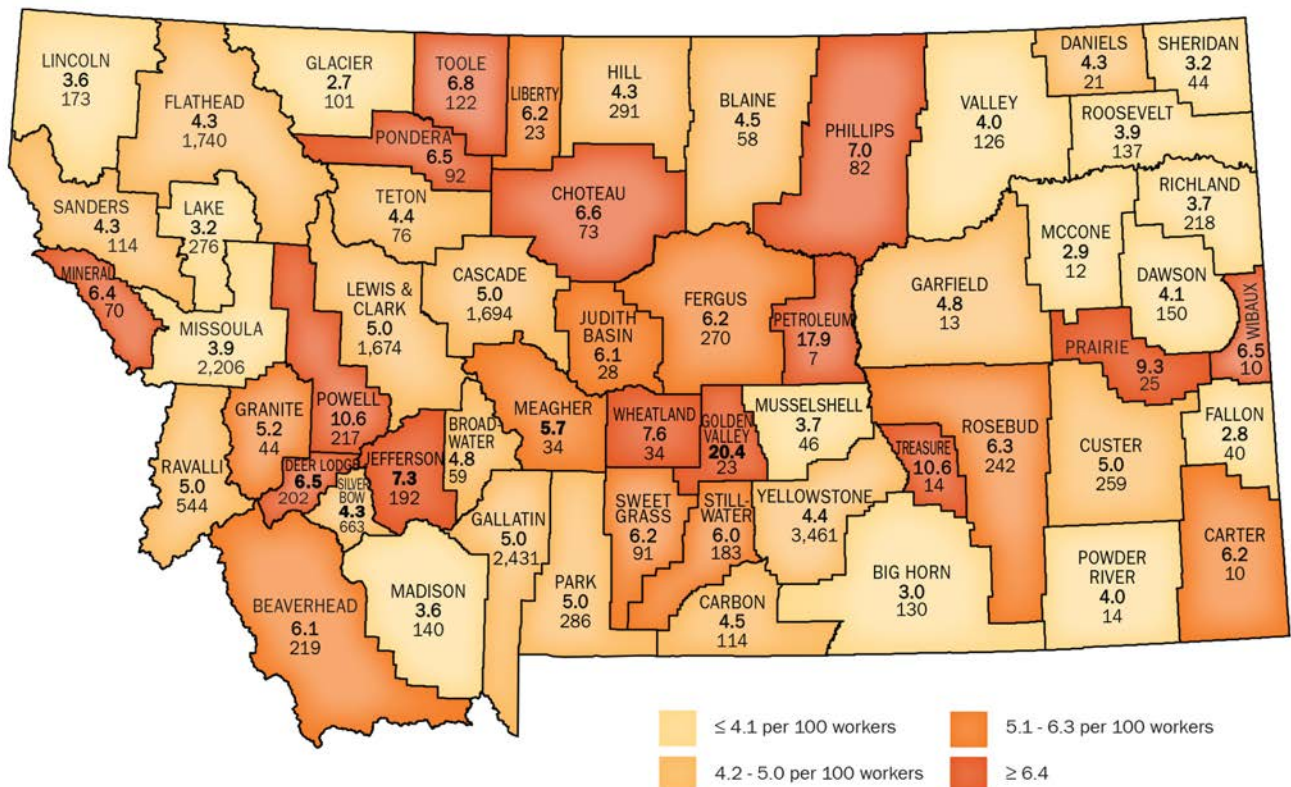
and steel fabrication operations, and hospitals and medical centers (Powell: 10.6; Jefferson: 7.3; Toole: 6.8; Choteau: 6.6; Deer Lodge: 6.5; Pondera: 6.5; and Mineral: 6.4).

County-level claim rates are calculated by dividing the number of reported claims in each county by the number of employees in the county. Less than one-third of injury locations are unknown so the number of reported claims per county may be underestimated. The state-level rate is calculated using all reported claims in Montana. Employment data is from the Quarterly Census of Employment and Wages (QCEW) report from the Bureau of Labor Statistics. Some limitations of employment data are that it does not include federal employees, military, self-employed, or small farms (fewer than 11 employees).

Exhibit 3.1

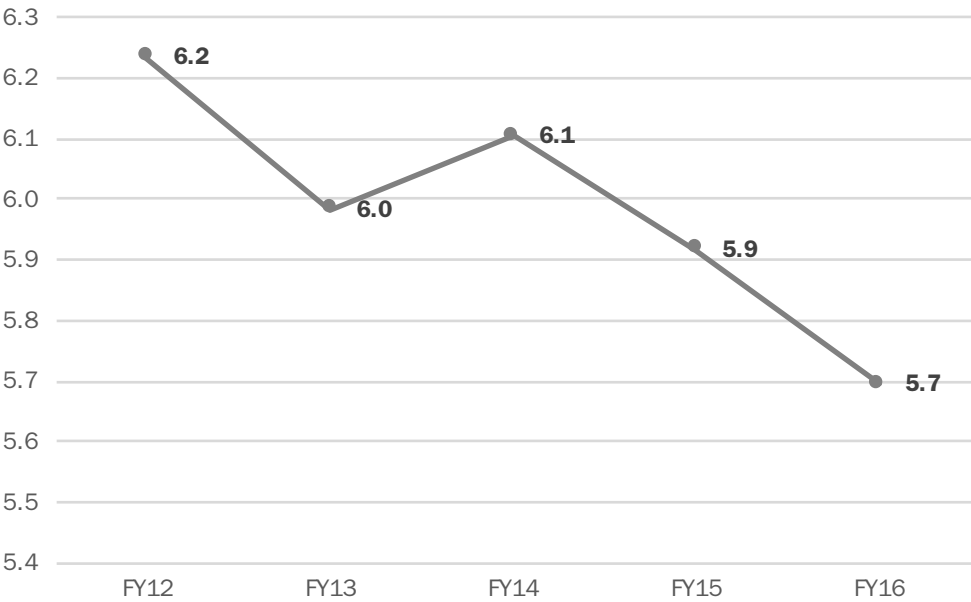
### Claim Rates and Number of Claims – FY16

By County



# CLAIMS RATES

Exhibit 3.2  
**Claim Rates**  
By Fiscal Year of Injury



## CLAIMS BY PLAN TYPE

Exhibit 3.3

### Reported Claims

By Plan Type and Fiscal Year of Injury

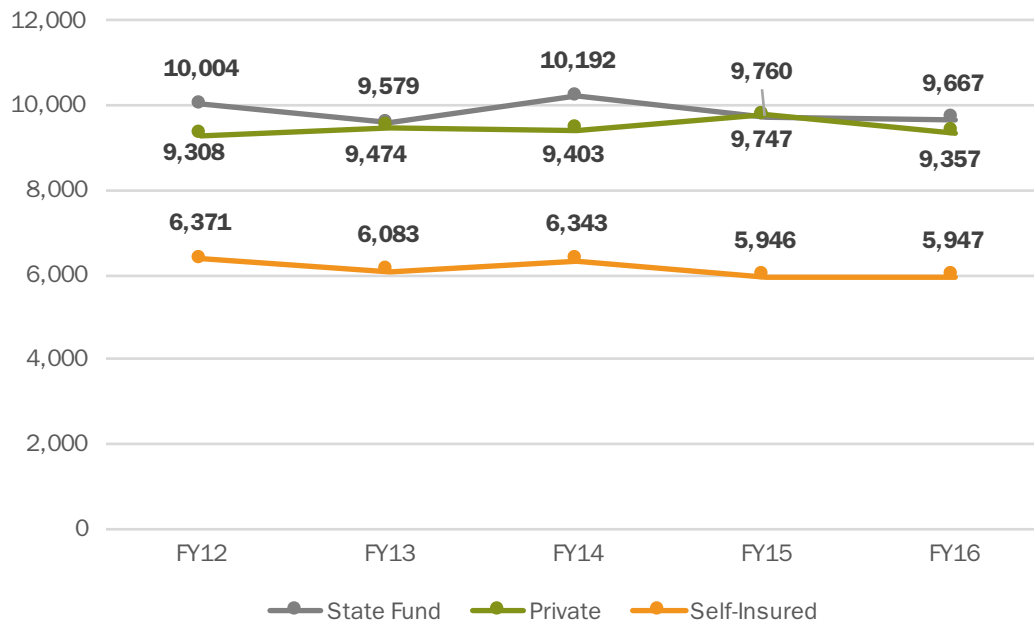


Exhibit 3.4

### Reported Claims

By Plan Type and Fiscal Year of Injury

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Count	%	Count	%	Count	%	Count	%	Count	%
Self-Insured	6,371	25%	6,083	24%	6,343	24%	5,946	23%	5,947	24%
Private	9,308	36%	9,474	38%	9,403	36%	9,760	38%	9,357	37%
State Fund	10,004	39%	9,579	38%	10,192	39%	9,747	38%	9,667	39%
Uninsured Employers' Fund	49	0%	34	0%	42	0%	45	0%	33	0%
Not Otherwise Classified	10	0%	12	0%	9	0%	1	0%	2	0%
<b>Total</b>	<b>25,742</b>	<b>100%</b>	<b>25,182</b>	<b>100%</b>	<b>25,989</b>	<b>100%</b>	<b>25,499</b>	<b>100%</b>	<b>25,006</b>	<b>100%</b>

## CLAIM CHARACTERISTICS

Exhibit 3.5

### Reported Claims

By Claimant Age at Time of Injury and Fiscal Year of Injury

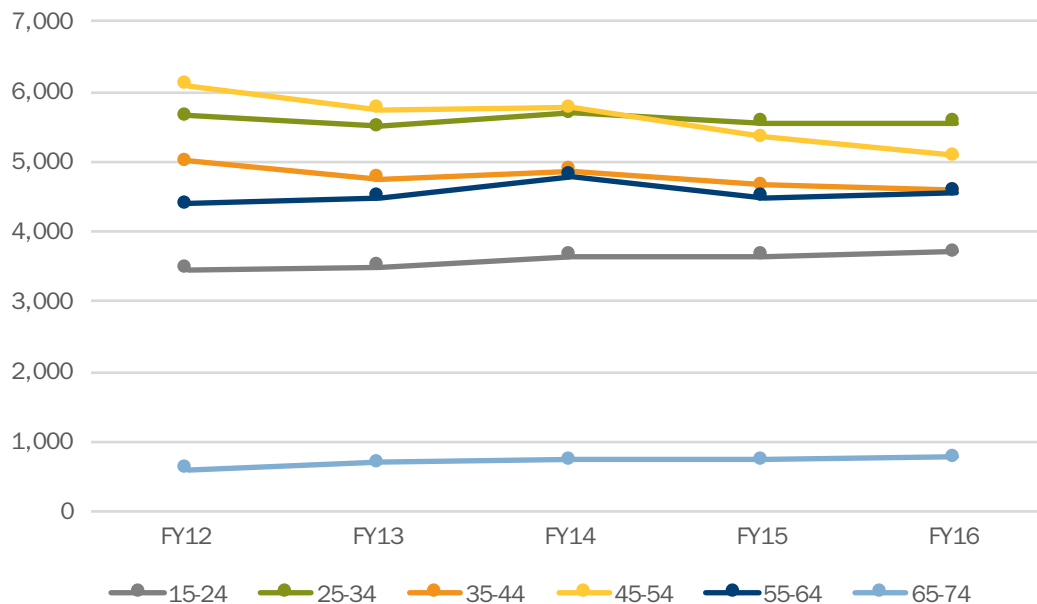


Exhibit 3.6

### Reported Claims

By Claimant Age at Time of Injury and Fiscal Year of Injury

	FY12		FY13		FY14		FY15		FY16	
Age Group	Count	%	Count	%	Count	%	Count	%	Count	%
15 to 24	3,458	13%	3,493	14%	3,654	14%	3,659	14%	3,709	15%
25 to 34	5,661	22%	5,498	22%	5,691	22%	5,558	22%	5,551	22%
35 to 44	5,006	19%	4,765	19%	4,866	19%	4,671	18%	4,590	18%
45 to 54	6,099	24%	5,746	23%	5,773	22%	5,352	21%	5,079	20%
55 to 64	4,399	17%	4,489	18%	4,798	18%	4,498	18%	4,564	18%
65 to 74	605	2%	690	3%	729	3%	744	3%	784	3%
Not Otherwise Classified	514	2%	501	2%	478	2%	1,017	4%	729	3%
<b>Total</b>	<b>25,742</b>	<b>100%</b>	<b>25,182</b>	<b>100%</b>	<b>25,989</b>	<b>100%</b>	<b>25,499</b>	<b>100%</b>	<b>25,006</b>	<b>100%</b>



## CLAIM CHARACTERISTICS

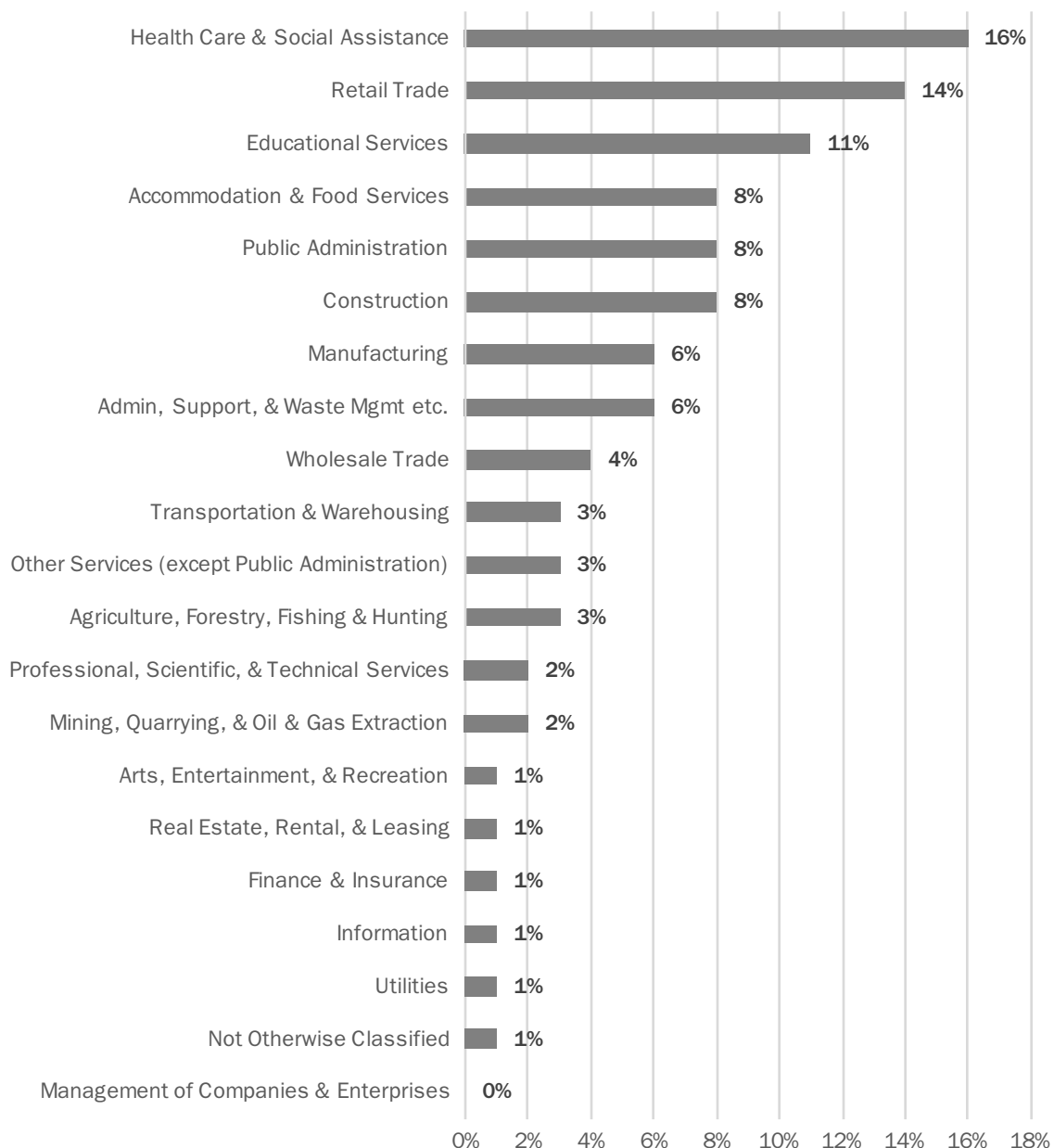
In FY16, 42% of all reported claims came from: health care & social assistance (17%), retail trade (14%), and educational services (11%) industries. Accommodation & food services (8%), public administration (8%), and construction (8%) industries comprised another 24%. This is consistent with reported claims by industry for the past five fiscal years, both

in terms of ranking and percentages. However, a high number of reported claims for these industries is predominately due to these industries employing the greatest number of workers in Montana. Therefore, a higher percentage of reported claims does not imply that these industries have a higher claims rate.

Exhibit 3.7

### Reported Claims – FY16

By Industry



## CLAIM CHARACTERISTICS

Exhibit 3.8

### Reported Claims

By Industry and Fiscal Year of Injury

	FY12		FY13		FY14		FY15		FY16	
Industry	Count	%	Count	%	Count	%	Count	%	Count	%
Health Care & Social Assistance	4,123	16%	4,197	17%	4,596	18%	4,094	16%	4,103	16%
Retail Trade	3,243	13%	3,309	13%	3,270	13%	3,388	13%	3,410	14%
Educational Services	2,751	11%	2,680	11%	2,896	11%	2,673	10%	2,656	11%
Accommodation & Food Services	1,828	7%	1,905	8%	1,861	7%	2,074	8%	2,067	8%
Public Administration	2,144	8%	2,040	8%	2,138	8%	2,040	8%	2,059	8%
Construction	1,816	7%	1,807	7%	1,964	8%	2,086	8%	2,024	8%
Manufacturing	1,784	7%	1,676	7%	1,640	6%	1,696	7%	1,599	6%
Admin, Support, Waste Mgmt, & Remediation Services	1,911	7%	1,719	7%	1,720	7%	1,605	6%	1,384	6%
Wholesale Trade	1,025	4%	1,043	4%	1,016	4%	1,017	4%	1,037	4%
Transportation & Warehousing	788	3%	747	3%	913	4%	829	3%	823	3%
Other Services (except Public Administration)	494	2%	468	2%	419	2%	611	2%	739	3%
Agriculture, Forestry, Fishing & Hunting	714	3%	682	3%	717	3%	745	3%	680	3%
Professional, Scientific, & Technical Services	525	2%	514	2%	476	2%	481	2%	515	2%
Mining, Quarrying, & Oil & Gas Extraction	765	3%	690	3%	613	2%	520	2%	436	2%
Arts, Entertainment, & Recreation	363	1%	393	2%	385	1%	360	1%	371	1%
Real Estate, Rental, & Leasing	371	1%	304	1%	307	1%	287	1%	276	1%
Finance & Insurance	251	1%	225	1%	235	1%	225	1%	207	1%
Information	236	1%	224	1%	222	1%	176	1%	183	1%
Utilities	222	1%	207	1%	190	1%	162	1%	152	1%
Management of Companies & Enterprises	43	0%	39	0%	42	0%	41	0%	44	0%
Not Otherwise Classified	345	1%	313	1%	369	1%	389	2%	241	1%
<b>Total</b>	<b>25,742</b>	<b>100%</b>	<b>25,182</b>	<b>100%</b>	<b>25,989</b>	<b>100%</b>	<b>25,499</b>	<b>100%</b>	<b>25,006</b>	<b>100%</b>

## CLAIM CHARACTERISTICS

Exhibit 3.9

### Reported Claims – FY16

By Cause of Injury

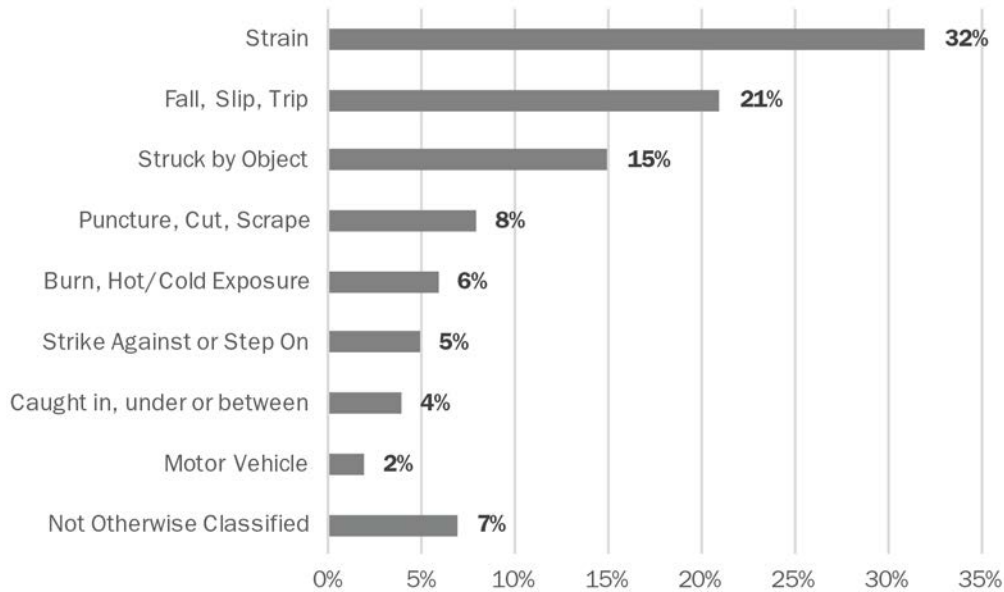


Exhibit 3.10

### Reported Claims

By Cause of Injury and Fiscal Year of Injury

	FY12		FY13		FY14		FY15		FY16	
Cause of Injury	Count	%	Count	%	Count	%	Count	%	Count	%
Strain	8,569	33%	8,180	32%	7,988	31%	8,266	32%	8,056	32%
Fall, Slip, Trip	5,250	20%	5,360	21%	6,310	24%	5,393	21%	5,159	21%
Struck by Object	3,926	15%	3,666	15%	3,771	15%	3,899	15%	3,822	15%
Puncture, Cut, Scrape	1,886	7%	1,883	7%	1,760	7%	1,941	8%	1,942	8%
Burn, Hot/Cold Exposure	1,168	5%	1,324	5%	1,308	5%	1,230	5%	1,396	6%
Strike Against or Step On	1,331	5%	1,351	5%	1,363	5%	1,309	5%	1,353	5%
Caught in, under or between	1,059	4%	942	4%	923	4%	992	4%	938	4%
Motor Vehicle	519	2%	520	2%	550	2%	504	2%	564	2%
Not Otherwise Classified	2,034	8%	1,956	8%	2,016	8%	1,965	8%	1,776	7%
<b>Total</b>	<b>25,742</b>	<b>100%</b>	<b>25,182</b>	<b>100%</b>	<b>25,989</b>	<b>100%</b>	<b>25,499</b>	<b>100%</b>	<b>25,006</b>	<b>100%</b>

## CLAIM CHARACTERISTICS

Exhibit 3.11

### Reported Claims – FY16

By Industry and Cause of Injury

Industry	Cause of Injury									Total
	Burn, Hot/ Cold Expo- sure	Caught In, Under or Between	Fall, Slip, Trip	Motor Vehicle	Puncture, Cut, Scrape	Strain	Strike Against or Step On	Struck By Object	NOC	
Health Care & Social Assistance	262	85	724	62	402	1,411	178	629	350	<b>4,103</b>
Retail Trade	122	144	602	40	331	1,270	172	469	260	<b>3,410</b>
Educational Services	108	70	844	20	139	634	128	642	71	<b>2,656</b>
Public Administration	143	89	421	93	113	664	115	232	189	<b>2,059</b>
Construction	101	95	352	45	101	671	181	326	152	<b>2,024</b>
Accommodation & Food Services	0	49	535	9	396	498	89	179	119	<b>1,874</b>
Manufacturing	102	99	197	25	131	594	97	209	145	<b>1,599</b>
Admin, Support, Waste Mgmt, & Remediation Services	107	43	293	52	49	447	93	230	70	<b>1,384</b>
Wholesale Trade	33	43	198	24	83	397	43	155	61	<b>1,037</b>
Transportation & Warehousing	27	39	186	50	28	298	35	106	54	<b>823</b>
Other Services (except Public Administration)	43	20	159	5	69	223	36	76	108	<b>739</b>
Agriculture, Forestry, Fishing & Hunting	30	47	147	58	8	131	53	172	34	<b>680</b>
Professional, Scientific, & Technical Services	31	24	87	15	14	150	25	142	27	<b>515</b>
Mining, Quarrying, & Oil & Gas Extraction	21	27	57	17	12	165	27	74	36	<b>436</b>
Arts, Entertainment, & Recreation	24	27	93	6	13	113	22	58	15	<b>371</b>
Real Estate, Rental, & Leasing	21	5	61	10	11	108	18	31	11	<b>276</b>
Finance & Insurance	5	5	75	10	3	75	6	13	15	<b>207</b>
Information	6	5	40	13	12	65	12	18	12	<b>183</b>
Utilities	10	6	36	6	12	45	7	19	11	<b>152</b>
Management of Companies & Enterprises	0	3	6	0	4	16	3	11	1	<b>44</b>
Not Otherwise Classified	200	13	46	4	11	81	13	31	35	<b>434</b>
<b>Grand Total</b>	<b>1,396</b>	<b>938</b>	<b>5,159</b>	<b>564</b>	<b>1,942</b>	<b>8,056</b>	<b>1,353</b>	<b>3,822</b>	<b>1,776</b>	<b>25,006</b>

## CLAIM CHARACTERISTICS

Exhibit 3.12

### Reported Claims – FY16

By Nature of Injury

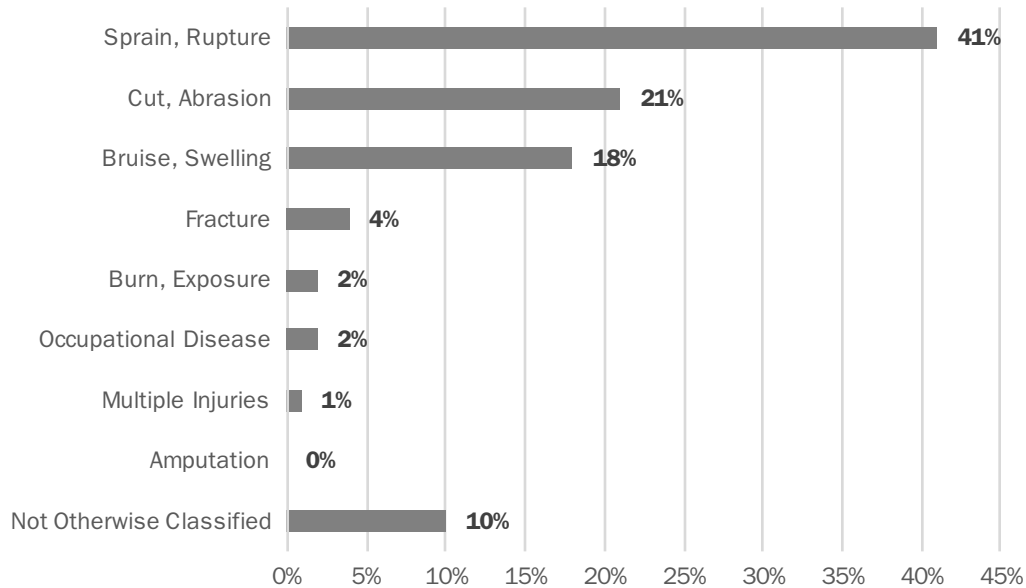


Exhibit 3.13

### Reported Claims

By Nature of Injury and Fiscal Year of Injury

	FY12		FY13		FY14		FY15		FY16	
Nature of Injury	Count	%	Count	%	Count	%	Count	%	Count	%
Sprain, Rupture	10,897	42%	10,862	43%	11,010	42%	10,735	42%	10,336	41%
Cut, Abrasion	5,342	21%	5,215	21%	5,265	20%	5,412	21%	5,269	21%
Bruise, Swelling	4,834	19%	4,606	18%	5,147	20%	4,727	19%	4,544	18%
Fracture	1,097	4%	996	4%	1,008	4%	945	4%	945	4%
Burn, Exposure	595	2%	655	3%	608	2%	588	2%	581	2%
Occupational Disease	643	2%	626	2%	614	2%	586	2%	526	2%
Multiple Injuries	121	0%	148	1%	191	1%	214	1%	304	1%
Amputation	40	0%	49	0%	57	0%	50	0%	46	0%
Not Otherwise Classified	2,173	8%	2,025	8%	2,089	8%	2,242	9%	2,455	10%
<b>Total</b>	<b>25,742</b>	<b>100%</b>	<b>25,182</b>	<b>100%</b>	<b>25,989</b>	<b>100%</b>	<b>25,499</b>	<b>100%</b>	<b>25,006</b>	<b>100%</b>



## CLAIM CHARACTERISTICS

Exhibit 3.14

### Reported Claims – FY16

By Part of Body

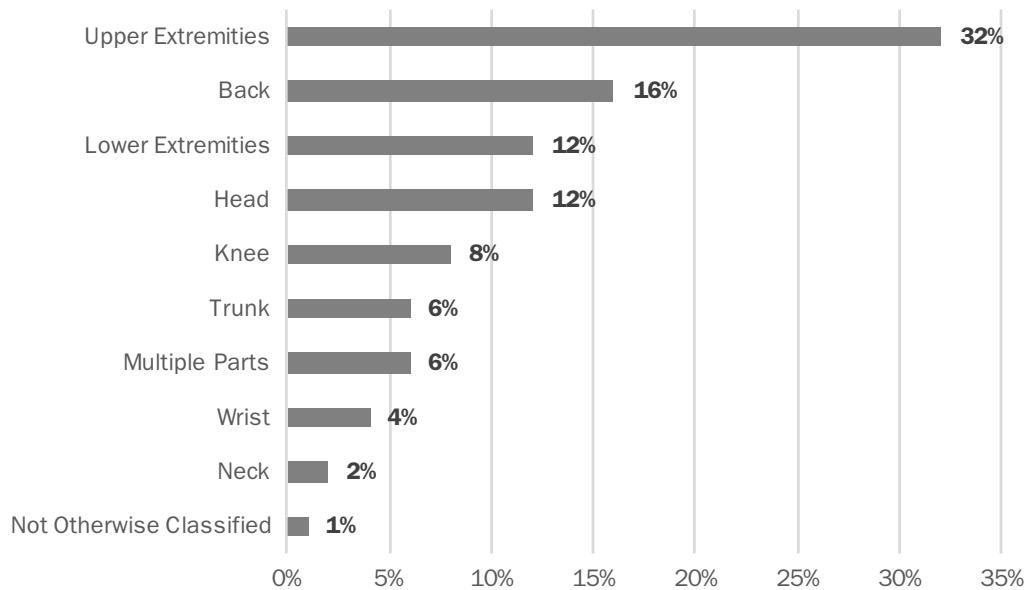


Exhibit 3.15

### Reported Claims

By Part of Body and Fiscal Year of Injury

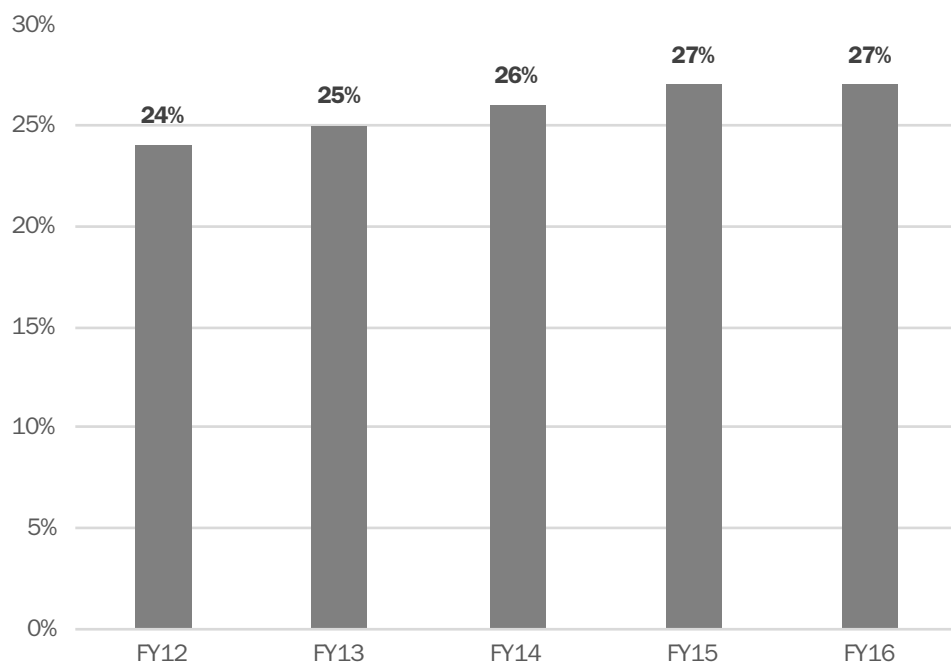
	FY12		FY13		FY14		FY15		FY16	
Part of Body	Count	%	Count	%	Count	%	Count	%	Count	%
Upper Extremities	8,198	32%	8,055	32%	8,083	31%	8,170	32%	8,054	32%
Back	4,578	18%	4,445	18%	4,551	18%	4,234	17%	4,124	16%
Lower Extremities	2,958	11%	2,860	11%	3,036	12%	3,053	12%	2,939	12%
Head	2,845	11%	2,755	11%	2,919	11%	2,933	12%	2,899	12%
Knee	2,108	8%	2,127	8%	2,159	8%	2,030	8%	2,065	8%
Trunk	1,739	7%	1,731	7%	1,805	7%	1,702	7%	1,624	6%
Multiple Parts	1,261	5%	1,299	5%	1,443	6%	1,427	6%	1,401	6%
Wrist	1,171	5%	1,117	4%	1,140	4%	1,107	4%	1,064	4%
Neck	585	2%	590	2%	589	2%	535	2%	516	2%
Not Otherwise Classified	299	1%	203	1%	264	1%	308	1%	320	1%
<b>Total</b>	<b>25,742</b>	<b>100%</b>	<b>25,182</b>	<b>100%</b>	<b>25,989</b>	<b>100%</b>	<b>25,499</b>	<b>100%</b>	<b>25,006</b>	<b>100%</b>

## INSURER DENIAL OF CLAIMS

Exhibit 3.16

### Insurer Denial of Claims

By Fiscal Year of Injury



## INSURER DENIAL OF CLAIMS

Exhibit 3.17

### Insurer Denial of Claims<sup>2</sup>

By Reason of Denial and Fiscal Year of Injury

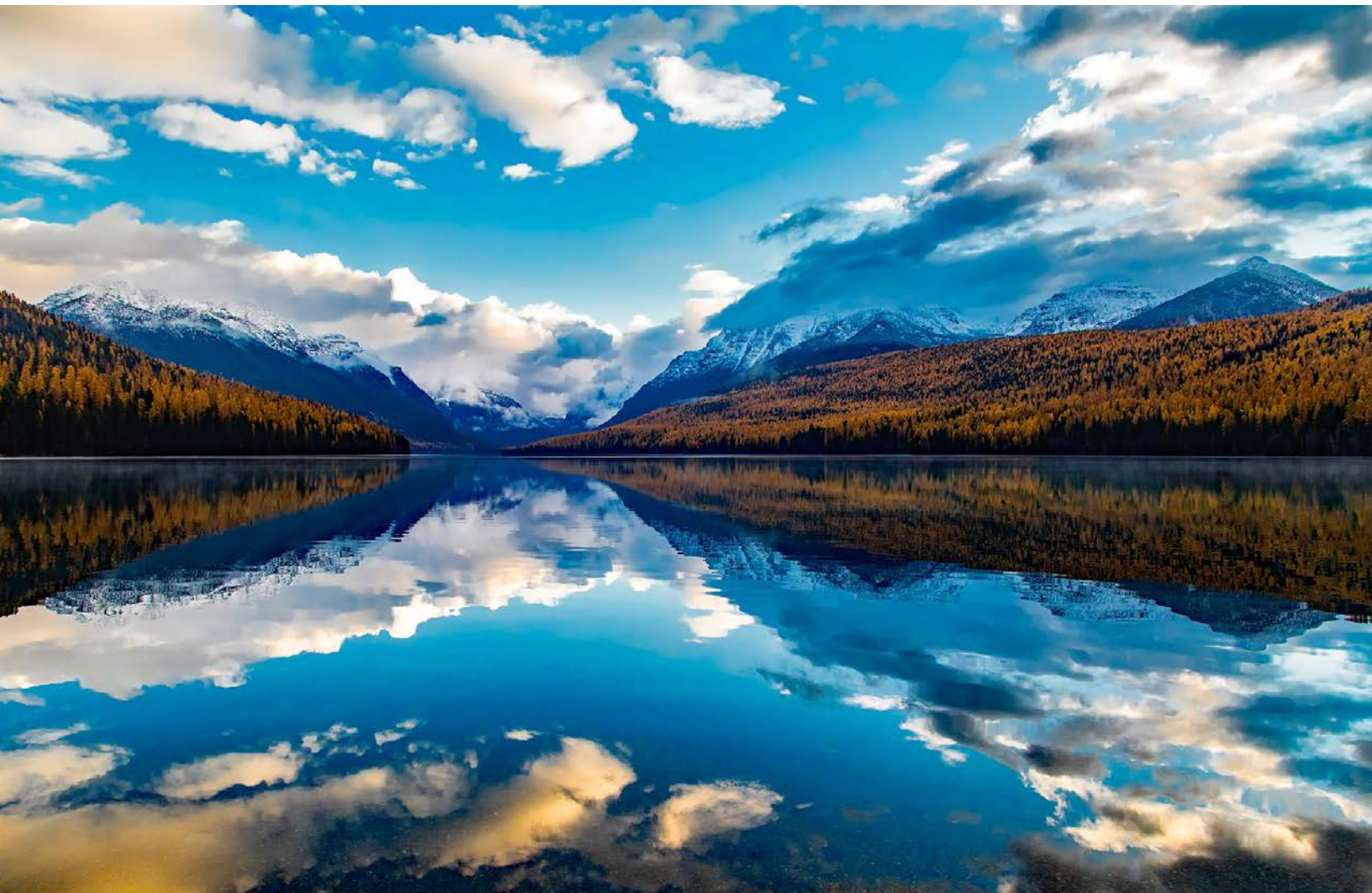
Reason for Claim Denial		FY12	FY13	FY14	FY15	FY16
Coverage Issue	No coverage	64	51	70	63	47
	405 - Independent Contractor Issue	0	2	1	5	4
Definition of Injury	Does not meet definition of injury	312	227	233	253	314
	Does not meet definition of Occupational Disease	45	41	44	72	84
	Stress - not compensable	8	14	13	17	30
Missing/Insufficient Information	Incomplete or missing information necessary to accept liability	115	37	76	365	995
	Non-Cooperation in Investigation	2	2	6	131	147
Notice/ Filing Requirements	No Signed FROI has been received	143	192	188	362	417
	No 30-day notice to employer	125	120	151	135	169
	Did not file within 12 months	4	13	39	59	45
Not in Course & Scope	Not in course and scope of employment	514	434	462	495	549
No Objective Medical	No objective medical findings to substantiate injury	4,760	5,089	5,342	4,852	5,349
Other	Coming & Going	0	0	0	0	1
	Pre-existing Condition	0	1	4	21	63
	Duplicate Claim	0	1	3	16	27
	Condition is covered under a prior claim	0	0	3	26	9
	Claimant does not wish to file a WC claim	0	1	1	20	19
	Other/Not Otherwise Classified	185	149	216	92	221
<b>Total</b>		<b>6,277</b>	<b>6,374</b>	<b>6,852</b>	<b>6,984</b>	<b>8,490</b>

<sup>2</sup>Starting in FY16, more than one denial reason may be coded per claim, where in previous years, each claim only had one denial reason. Also in previous years, there was not a distinction between 'receiving a signed FROI' and 'not filing within 12 months', so they were both placed in the reason 'Did not file within 12 months'. A new reason was added in FY15, 'No Signed FROI has been received' to make the distinction.

# Benefits

## Section 4

- Total Benefits
- Insurer Miscellaneous Expenses
- Benefit Distribution
- Temporary Disability Paid Duration
- Settlement Dollars
- Settlement Of Medical Benefits For Best Interest
- Injured Worker Attorney Fees
- Insurer Legal Expenses



## TOTAL BENEFITS

The total benefits paid for each fiscal year are compiled from the total dollars that insurers report paid in that year for medical (including medical in excess of \$200,000) and indemnity benefits, regardless of the original date of injury.

This data is compiled from quarterly expenditure reports submitted to the Department by workers' compensation insurers or by claim administrators on the insurers' behalf.

Exhibit 4.1

### Total Benefits Paid

By Plan Type and Fiscal Year of Payment

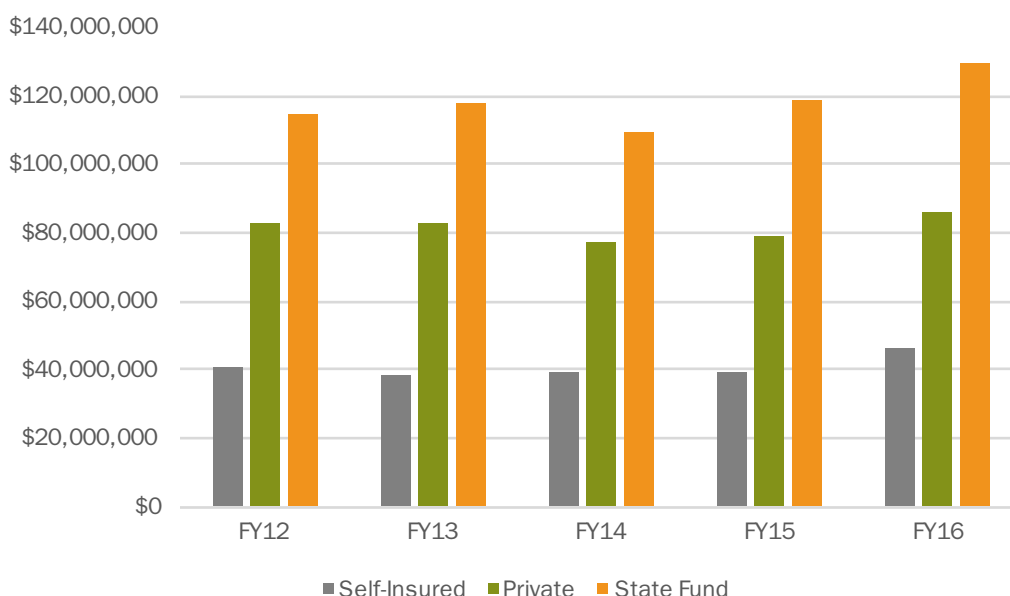


Exhibit 4.2

### Total Benefits Paid<sup>1</sup>

By Plan Type and Fiscal Year of Payment

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Self-Insured	\$41,062,063	17%	\$38,585,311	16%	\$39,072,836	17%	\$39,215,927	17%	\$46,479,748	18%
Private	\$82,784,689	35%	\$82,517,779	35%	\$76,983,400	34%	\$78,830,587	33%	\$85,644,975	33%
State Fund	\$115,037,148	48%	\$117,694,452	49%	\$109,289,961	48%	\$118,785,327	50%	\$129,267,703	49%
<b>Total</b>	<b>\$238,883,900</b>	<b>100%</b>	<b>\$238,797,542</b>	<b>100%</b>	<b>\$225,346,197</b>	<b>100%</b>	<b>\$236,831,841</b>	<b>100%</b>	<b>\$261,392,426</b>	<b>100%</b>

<sup>1</sup>The percentage totals in this section may not sum exactly to 100% due to rounding.



## TOTAL BENEFITS

Exhibit 4.3

### Medical Payments

By Plan Type and Fiscal Year of Payment

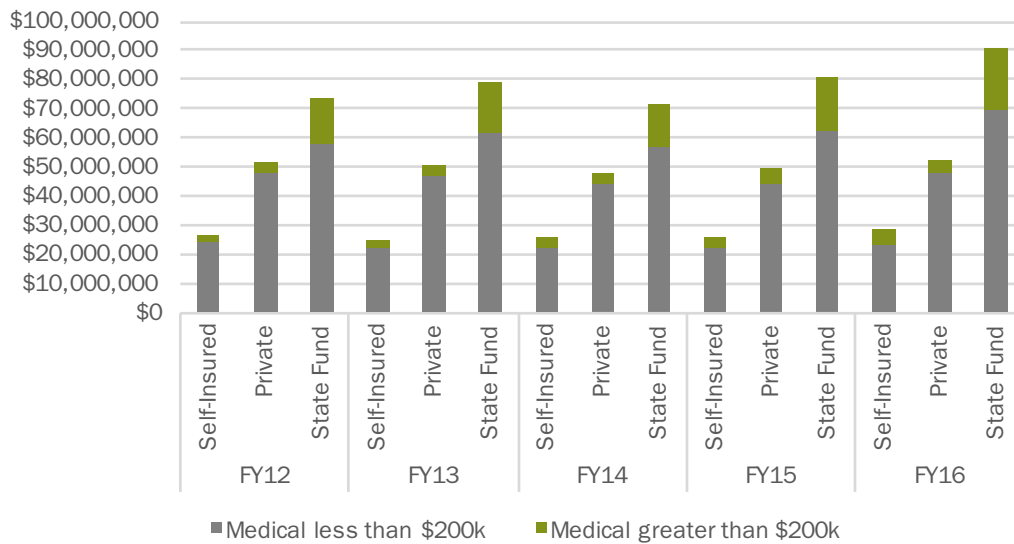


Exhibit 4.4

### Medical Payments

By Plan Type and Fiscal Year of Payment

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Self-Insured	\$26,422,994	17%	\$25,105,588	16%	\$25,762,018	18%	\$26,008,711	17%	\$29,047,709	17%
Private	\$51,538,641	34%	\$50,653,724	33%	\$47,611,486	33%	\$49,720,428	32%	\$52,744,028	31%
State Fund	\$73,234,300	48%	\$78,502,158	51%	\$71,421,450	49%	\$80,372,309	51%	\$90,799,244	53%
<b>Total</b>	<b>\$151,195,935</b>	<b>100%</b>	<b>\$154,261,470</b>	<b>100%</b>	<b>\$144,794,954</b>	<b>100%</b>	<b>\$156,101,448</b>	<b>100%</b>	<b>\$172,590,981</b>	<b>100%</b>

## TOTAL BENEFITS

Exhibit 4.5

### Indemnity Payments

By Plan Type and Fiscal Year of Payment

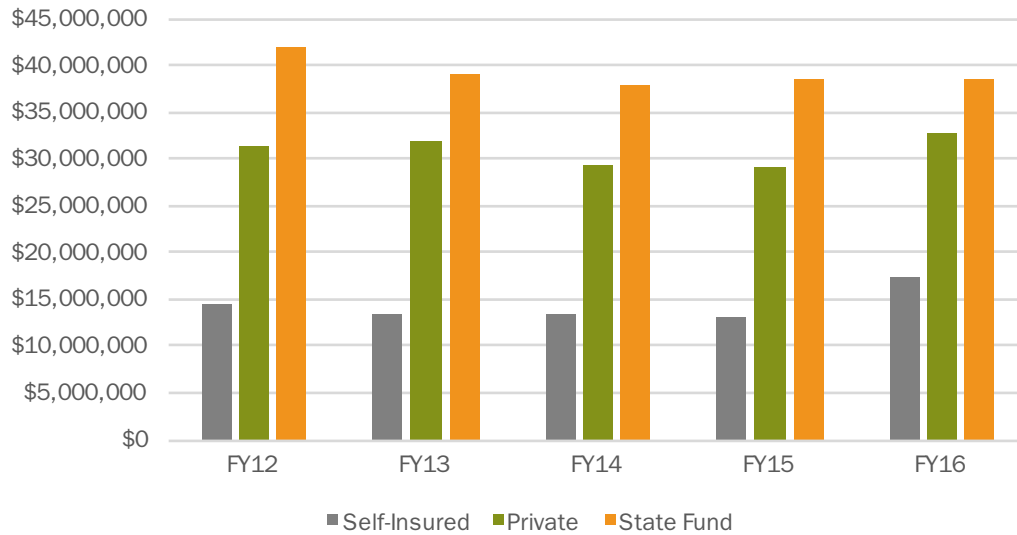


Exhibit 4.6

### Indemnity Payments

By Plan Type and Fiscal Year of Payment

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Self-Insured	\$14,639,070	17%	\$13,479,723	16%	\$13,310,818	17%	\$13,207,215	16%	\$17,432,039	20%
Private	\$31,246,048	36%	\$31,864,055	38%	\$29,371,914	36%	\$29,110,159	36%	\$32,900,947	37%
State Fund	\$41,802,848	48%	\$39,192,294	46%	\$37,868,511	47%	\$38,413,019	48%	\$38,468,459	43%
<b>Total</b>	<b>\$87,687,966</b>	<b>100%</b>	<b>\$84,536,072</b>	<b>100%</b>	<b>\$80,551,243</b>	<b>100%</b>	<b>\$80,730,393</b>	<b>100%</b>	<b>\$88,801,445</b>	<b>100%</b>

## INSURER MISCELLANEOUS EXPENSES

Miscellaneous expenses are reported to the Department as a part of the quarterly expenditure reports submitted by workers' compensation insurers or by claim administrators on the insurers' behalf. Miscellaneous expenses are costs incurred on a claim by an insurer other than medical and indemnity benefits. These costs include, but are not limited to:

- Rehabilitation services provided by a licensed rehabilitation provider or the department of health and human services;
- Rehabilitation expenses, such as books and tuition;

- Auxiliary rehabilitation benefits, such as relocation expenses;
- Administrative costs for processing of claims, such as the costs of investigating or adjusting the claim;
- Independent medical examinations requested by the insurer where the purpose of the examination is not for the diagnosis or treatment of the claimant's condition;
- Matching payments to a catastrophically injured worker's family; and
- Various other miscellaneous costs that do not constitute an indemnity or medical benefit provided to the claimant or beneficiary.

Exhibit 4.7

### Insurer Miscellaneous Expenses

By Plan Type and Fiscal Year

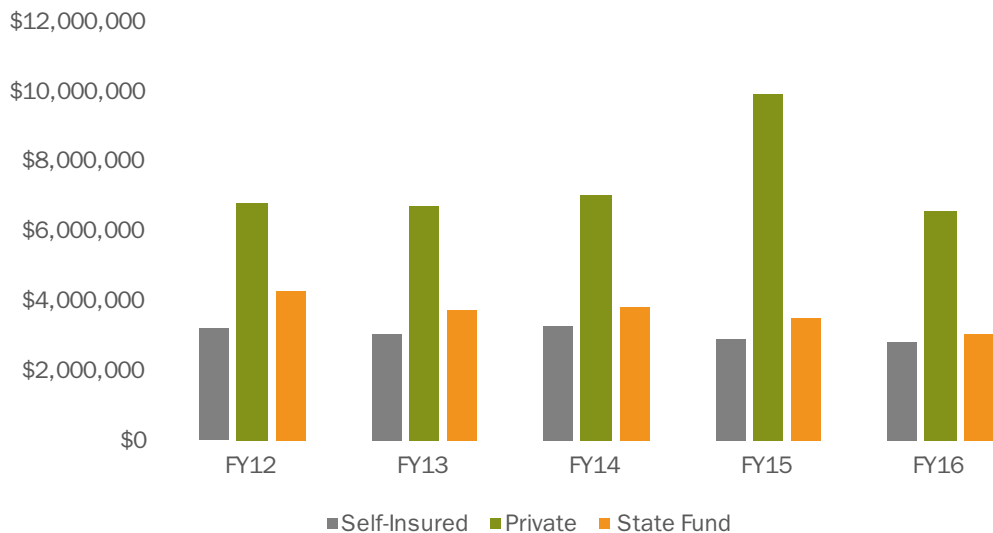


Exhibit 4.8

### Insurer Miscellaneous Expenses

By Plan Type and Fiscal Year

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Self-Insured	\$3,188,877	22%	\$3,036,694	23%	\$3,317,717	23%	\$2,893,107	18%	\$2,801,906	23%
Private	\$6,807,376	48%	\$6,689,774	50%	\$7,007,139	50%	\$9,960,039	61%	\$6,595,379	53%
State Fund	\$4,284,226	30%	\$3,724,473	28%	\$3,817,460	27%	\$3,548,943	22%	\$3,023,236	24%
<b>Total</b>	<b>\$14,280,479</b>	<b>100%</b>	<b>\$13,450,941</b>	<b>100%</b>	<b>\$14,142,316</b>	<b>100%</b>	<b>\$16,402,089</b>	<b>100%</b>	<b>\$12,420,521</b>	<b>100%</b>

## BENEFIT DISTRIBUTION

The next series of exhibits show various breakdowns of benefits paid on indemnity claims, using data from Subsequent Reports of Injury (SROIs) received by the Department.

Major workers' compensation reform passed in 2011 reduced the eligibility for permanent partial disability (PPD) awards, terminated medical benefits after 5 years from the date of injury, and settled future medical for best interest. Several other provisions, including these, significantly affected benefit distribution. In Exhibit 4.10, the share of PPD has decreased, most notably from FY14 to FY15. The rate of change from FY15 to FY16 will not be fully realized until the FY16 claims mature.

Claims with dates of injury after July 1, 2011 just recently became eligible for closure of medical

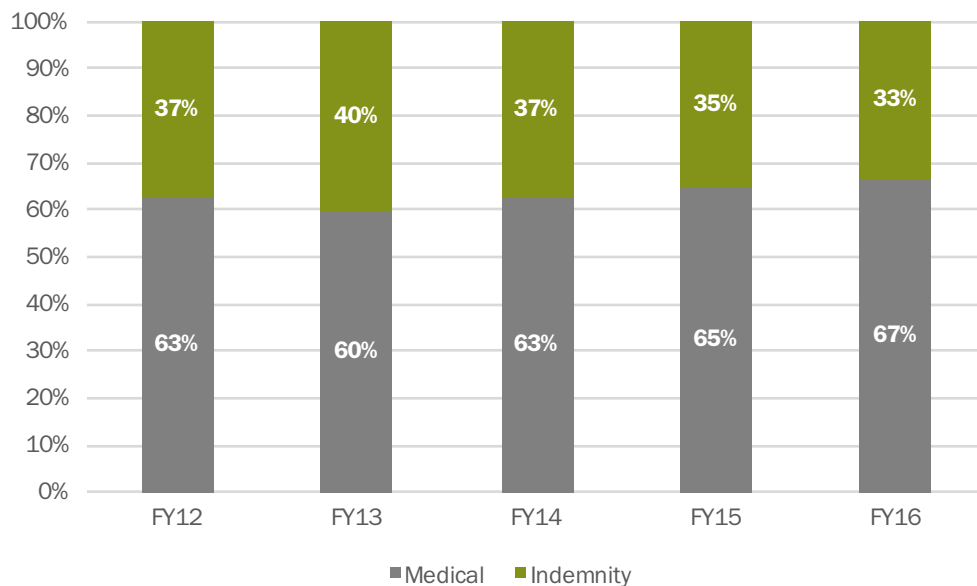
benefits unless they request or approve reopening. Those approved are subject to a bi-annual review to remain open. The termination does not apply to injured workers who are determined to be permanently totally disabled; receive care for the repair or replacement of a prosthesis; or to medical benefits settled or closed by agreement or by a court order. This provision is expected to decrease total medical benefits.

Offsetting the decrease in total medical is the settlement of future medical, with the largest settlement, to date, close to \$6 million. The settlement can settle wage loss, medical and any other benefits and may include a set aside for Medicare to limit cost shifting. More information on this type of settlement is found in Exhibits 4.26 through 4.28.

### Exhibit 4.9

#### Total Benefits Paid on Indemnity Claims

By Benefit Type and Fiscal Year of Injury



## BENEFIT DISTRIBUTION

Exhibit 4.10

### Indemnity Benefits Paid

By Benefit Type and Fiscal Year of Injury

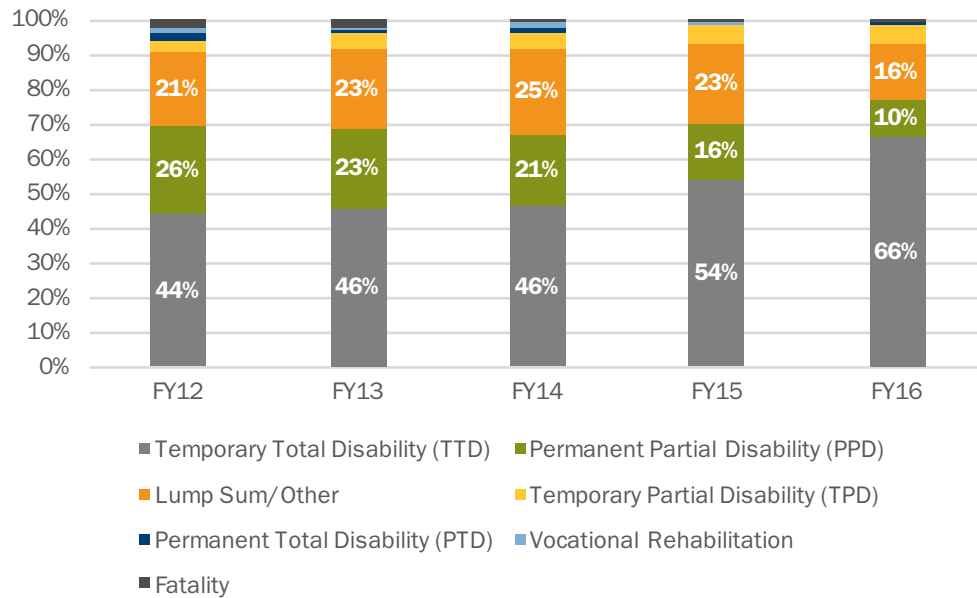
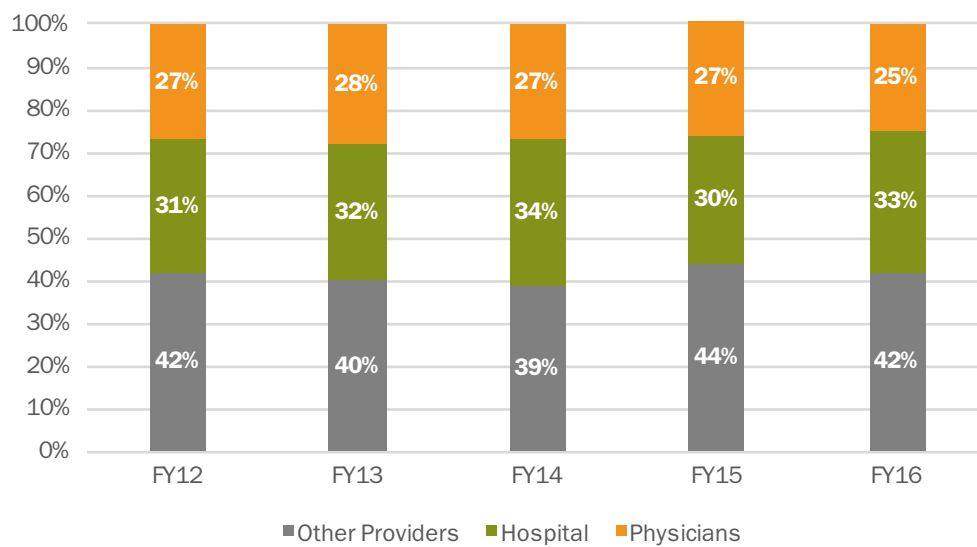


Exhibit 4.11

### Medical Dollars on Indemnity Claims

By Type of Medical Provider and Fiscal Year of Injury



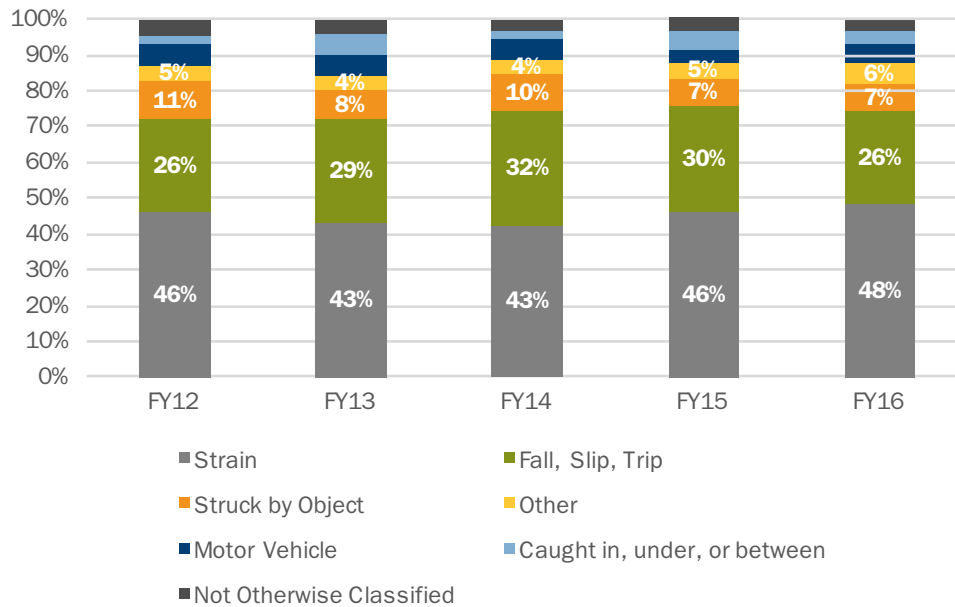


## BENEFIT DISTRIBUTION

Exhibit 4.12

### Total Benefits Paid on Indemnity Claims<sup>2</sup>

By Cause of Injury and Fiscal Year of Injury

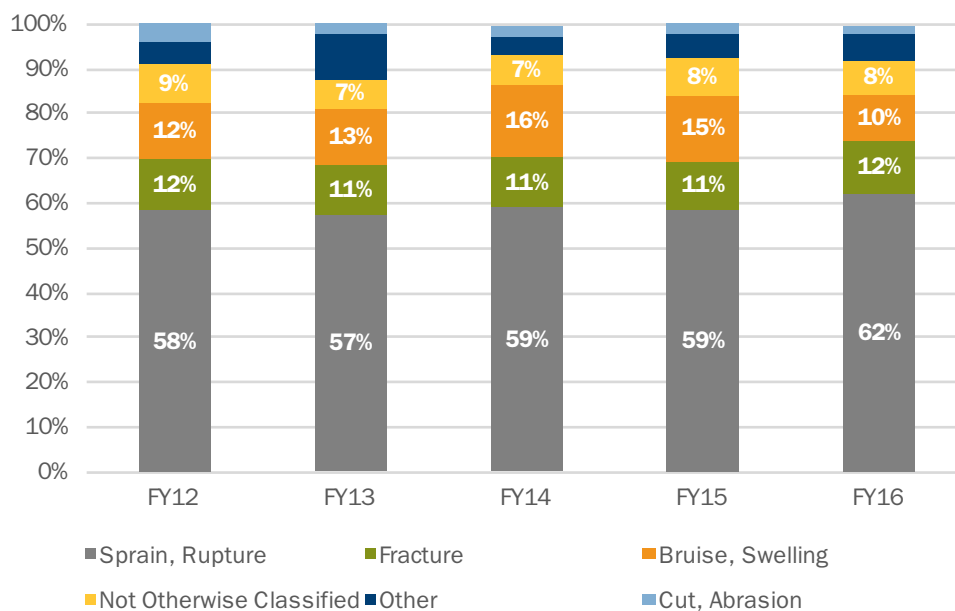


<sup>2</sup>Other includes Strike against or Step on; Burn, Hot/Cold Exposure; and Puncture, Cut, Scrape

Exhibit 4.13

### Total Benefits Paid on Indemnity Claims<sup>3</sup>

By Nature of Injury and Fiscal Year of Injury



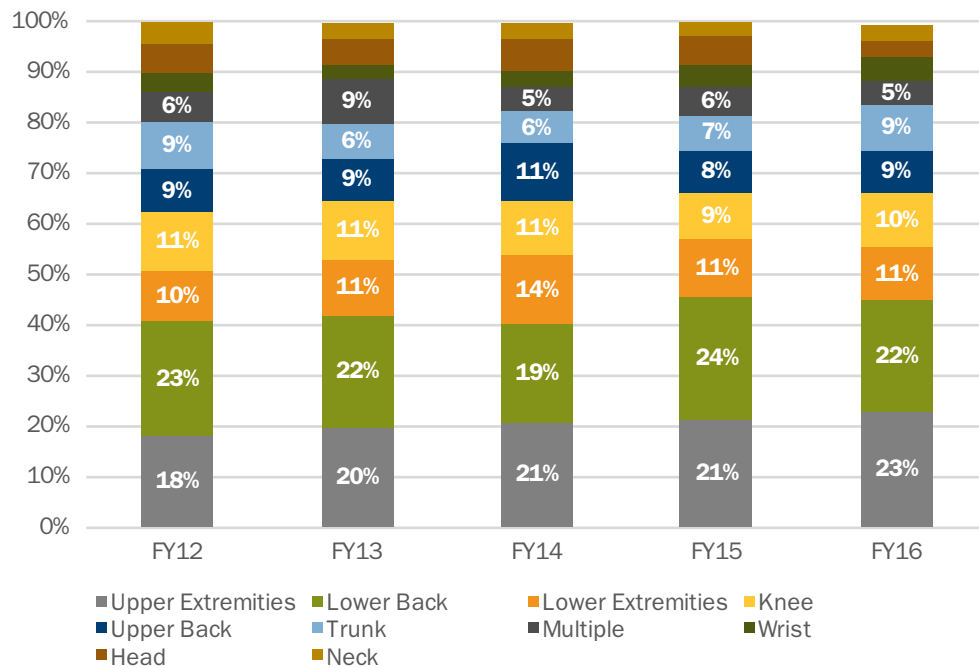
<sup>3</sup>Other includes Amputation; Burn, Exposure; Occupational Disease; and Multiple Injuries

## BENEFIT DISTRIBUTION

Exhibit 4.14

### Total Benefits Paid on Indemnity Claims<sup>4</sup>

By Part of Body and Fiscal Year of Injury



<sup>4</sup>Part of Body as reported on the First Report of Injury.

## BENEFIT DISTRIBUTION

The benefit distributions displayed as histograms in Exhibits 4.15 and 4.16 represent the proportion of claims that fall into different benefit dollar ranges. For wage loss claims with dates of injury from FY12 to FY16, most wage loss benefits (88%) were \$20,000 or less. Most medical benefits (78%) were \$20,000 or less.

Exhibit 4.15

### Distribution of Wage Loss Benefits Paid – FY12 to FY16

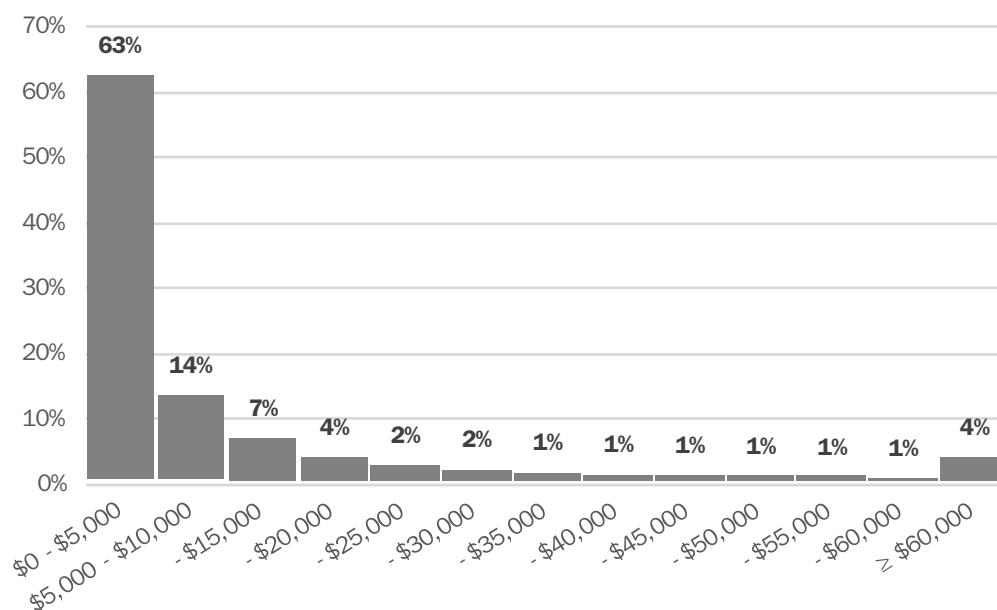
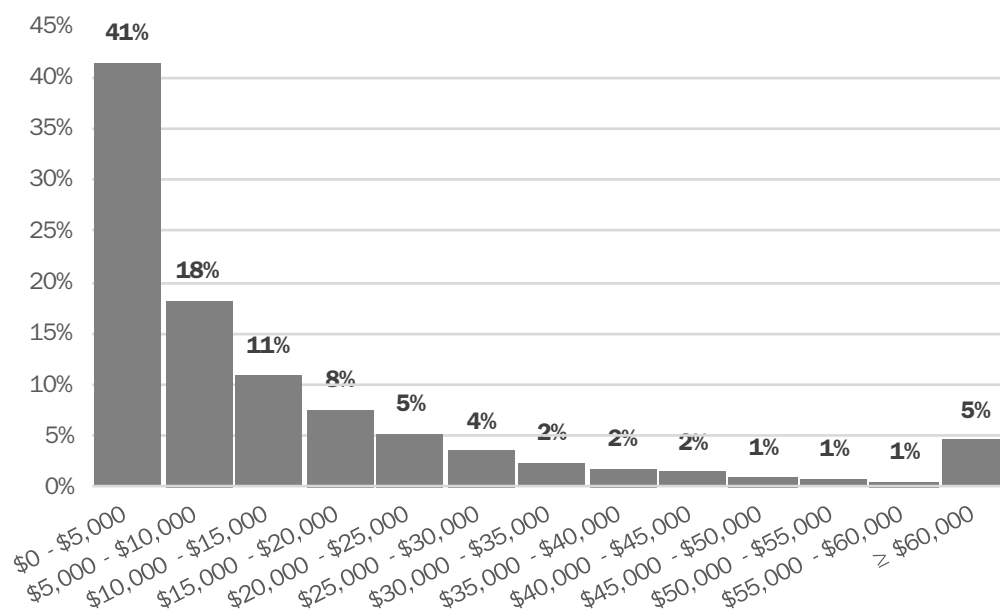


Exhibit 4.16

### Distribution of Medical Benefits Paid – FY12 to FY16



## TEMPORARY DISABILITY PAID DURATION

Disability duration is an important measure of how quickly injured workers return to work. Claims with Temporary Total Disability (TTD) or Temporary Partial Disability (TPD) or both were considered to calculate the average paid disability duration of injured workers in Montana. The “All Plans” average is a weighted average.

We calculated the paid disability duration as the total TTD payments plus TPD payments on each claim divided by the reported weekly benefit rate for each claim. The weekly benefit rate value was chosen by the following rules:

- If TTD WBR (weekly benefit rate) was available; TTD WBR was used for both TTD and TPD;
- If TTD WBR was not available, TPD WBR was used for both TTD and TPD;
- If neither TTD WBR nor TPD WBR was available, cases were excluded.

High (>\$733 for 1 Year Maturity and >\$698 for 3 Year Maturity) or extremely low weekly benefit rate (<\$60) values were excluded from the analysis due to data quality concerns. For 1-year maturity, the longest maturity cannot be beyond 52 weeks and the longest 3-year maturity was capped at 157 weeks.

Exhibit 4.17

### Temporary Disability Paid Duration (weeks) – 1 Year Maturity

By Plan Type and Fiscal Year of Injury

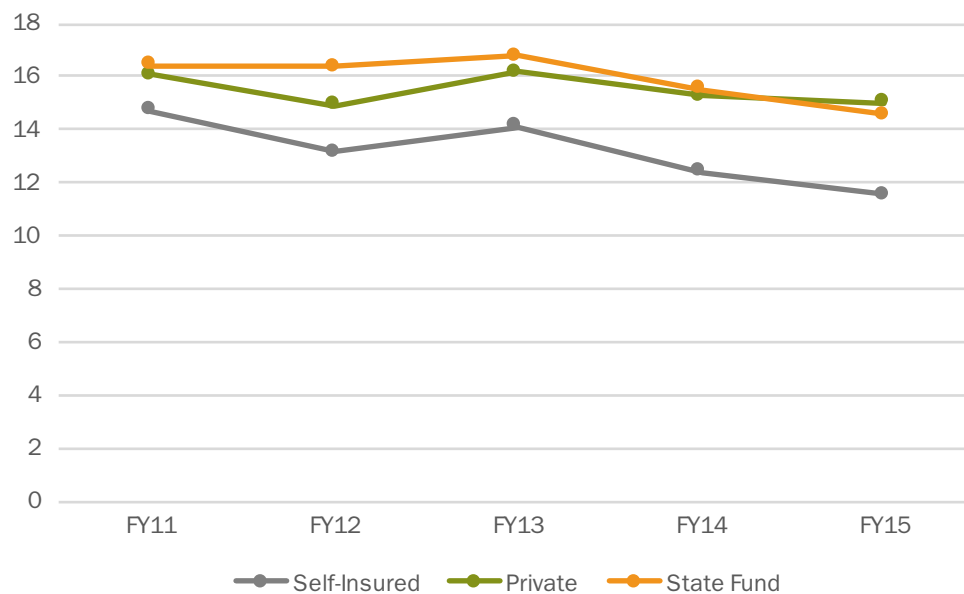


Exhibit 4.18

### Temporary Disability Paid Duration (weeks) – 1 Year Maturity

By Plan Type and Fiscal Year of Injury

Plan Type	FY11	FY12	FY13	FY14	FY15
Self-Insured	14.7	13.2	14.1	12.4	11.6
Private	16.1	14.9	16.1	15.2	15.0
State Fund	16.4	16.4	16.8	15.5	14.6
<b>All Plans</b>	<b>16.0</b>	<b>15.3</b>	<b>16.1</b>	<b>15.0</b>	<b>14.4</b>

## TEMPORARY DISABILITY PAID DURATION

Exhibit 4.19

### Temporary Disability Paid Duration (weeks) – 3 Year Maturity

By Plan Type and Fiscal Year of Injury

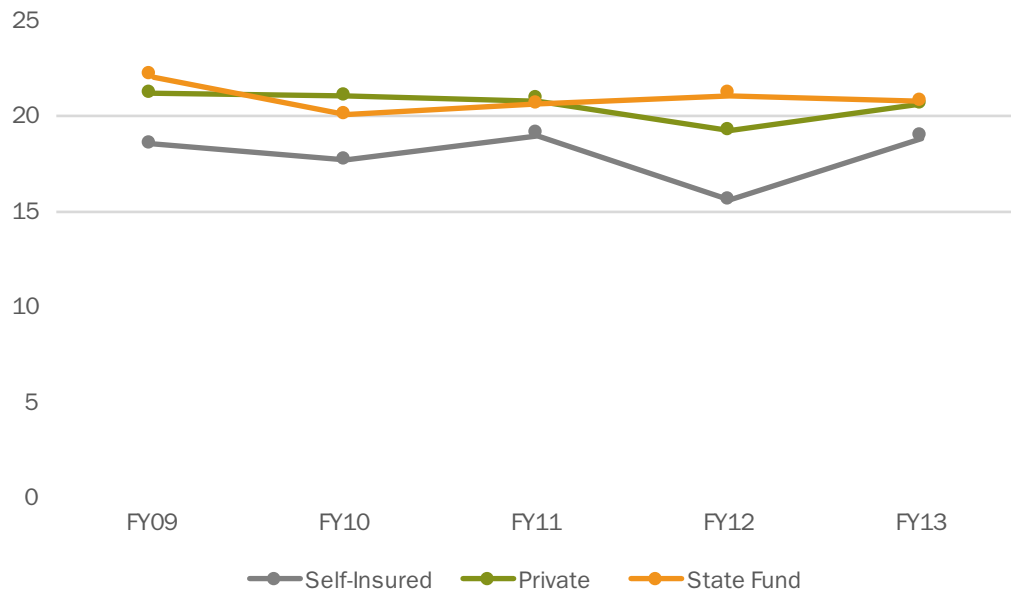


Exhibit 4.20

### Temporary Disability Paid Duration (weeks) – 3 Year Maturity

By Plan Type and Fiscal Year of Injury

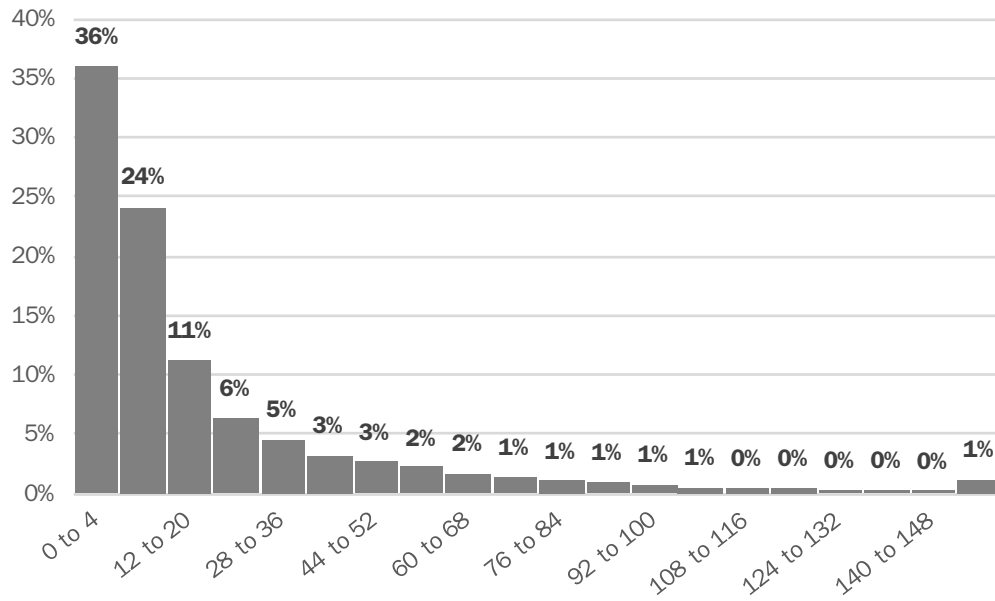
Plan Type	FY09	FY10	FY11	FY12	FY13
Self-Insured	18.5	17.6	19.0	15.6	18.9
Private	21.1	21.0	20.8	19.2	20.6
State Fund	22.0	20.0	20.6	21.1	20.8
<b>All Plans</b>	<b>21.2</b>	<b>20.1</b>	<b>20.4</b>	<b>19.5</b>	<b>20.4</b>



## TEMPORARY DISABILITY PAID DURATION

Exhibit 4.21

### Distribution of Temporary Disability Paid Duration (weeks) – 3-Year Maturity



## SETTLEMENT DOLLARS

Settlements are lump sum payments of the claimant's workers' compensation indemnity and/or medical benefits. Benefits are usually paid in periodic payments designed to sustain an injured worker over an extended period of time. Settlements can occur when the claimant and the insurer agree that benefits will be converted to a lump sum payment. If the claimant has more than one claim, a settlement may settle more than one of

those claims. Included in the dollar amount of the settlement is the money specified for settlement of medical benefits under "Best Interest", as shown in Exhibits 4.27 and 4.28. Settlements are subject to approval by Employment Relations Division (ERD).

Settlement counts and dollar amounts (average and total) for injury and occupational disease settlements, by plan type and fiscal year of injury, are displayed below.

Exhibit 4.22

### Average Settlement Amount

By Plan Type and Fiscal Year of Injury

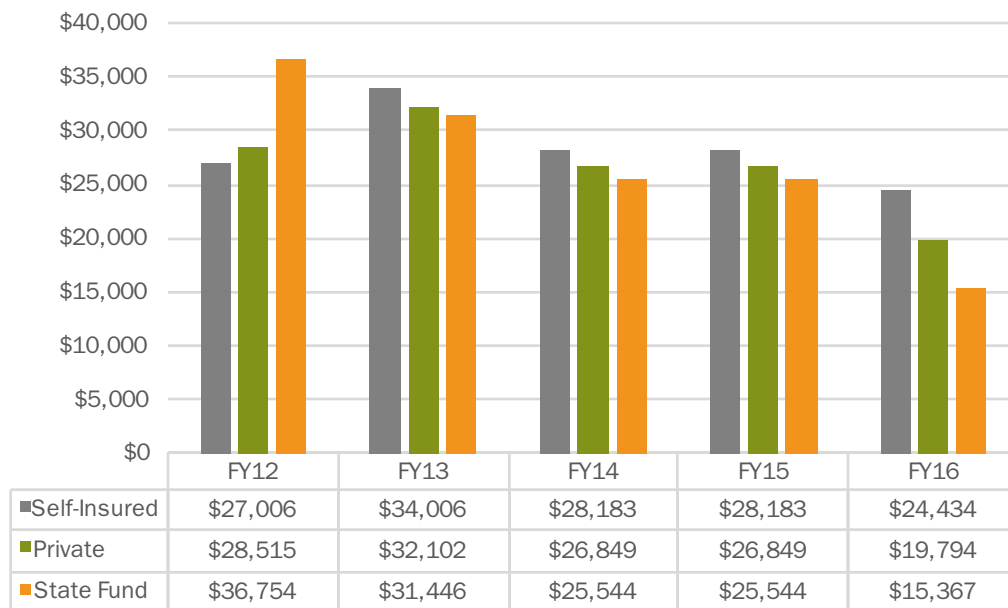


Exhibit 4.23

### Settlement Amounts for Settled Claims

By Plan Type and Fiscal Year of Injury

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Amount	Count	Amount	Count	Amount	Count	Amount	Count	Amount	Count
Self-Insured	\$3,591,812	133	\$4,556,748	134	\$3,366,243	97	\$2,113,721	75	\$1,441,577	59
Private	\$14,799,315	519	\$17,206,882	536	\$11,364,591	425	\$10,148,948	378	\$3,464,035	175
State Fund	\$22,897,755	623	\$18,647,414	593	\$18,807,248	617	\$14,074,684	551	\$5,716,691	372
UEF	\$261,268	10	\$120,386	9	\$180,096	10	\$163,918	5	\$19,000	2
<b>Total</b>	<b>\$41,550,150</b>	<b>1,285</b>	<b>\$40,531,430</b>	<b>1,272</b>	<b>\$33,718,178</b>	<b>1,149</b>	<b>\$26,501,271</b>	<b>1,009</b>	<b>\$10,641,303</b>	<b>608</b>

## SETTLEMENT DOLLARS

The following two exhibits show settlement information by the fiscal year of the settlement decision. This provides an indicator of actual activity in the system as it occurs.

Exhibit 4.24

### Average Settlement Amount

By Fiscal Year of Decision



Exhibit 4.25

### Settlement Amounts for Claims Settled

By Plan Type and Fiscal Year of Decision

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Amount	Count	Amount	Count	Amount	Count	Amount	Count	Amount	Count
Self-Insured	\$6,630,823	224	\$5,305,175	155	\$8,310,162	181	\$9,291,073	200	\$13,486,434	271
Private	\$22,624,927	708	\$26,177,059	710	\$24,172,581	689	\$23,328,524	626	\$24,032,535	617
State Fund	\$27,851,630	713	\$26,799,636	686	\$25,007,248	723	\$40,035,823	887	\$47,193,762	1,103
UEF	\$68,815	8	\$587,132	10	\$595,846	13	\$404,918	13	\$146,500	7
<b>Total</b>	<b>\$57,176,195</b>	<b>1,653</b>	<b>\$58,869,002</b>	<b>1,561</b>	<b>\$58,085,837</b>	<b>1,606</b>	<b>\$73,060,338</b>	<b>1,726</b>	<b>\$84,859,231</b>	<b>1,998</b>

## SETTLEMENT OF MEDICAL BENEFITS FOR BEST INTEREST

In March 2011, the Montana Legislature passed legislation that allowed for undisputed future medical benefits to be settled on an accepted claim if the claimant has reached maximum medical improvement, regardless of the date of injury. Petitions for settlement of medical benefits for “best interest” require a rationale for the settlement, a statement of why it’s in the best interest of the parties to settle the medical benefits, and a signed acknowledgment from the injured worker.

The following three exhibits show medical settlements for best interest since the law went into effect in April 2011, by fiscal year of injury. Exhibit 4.26 shows the number of settlements approved

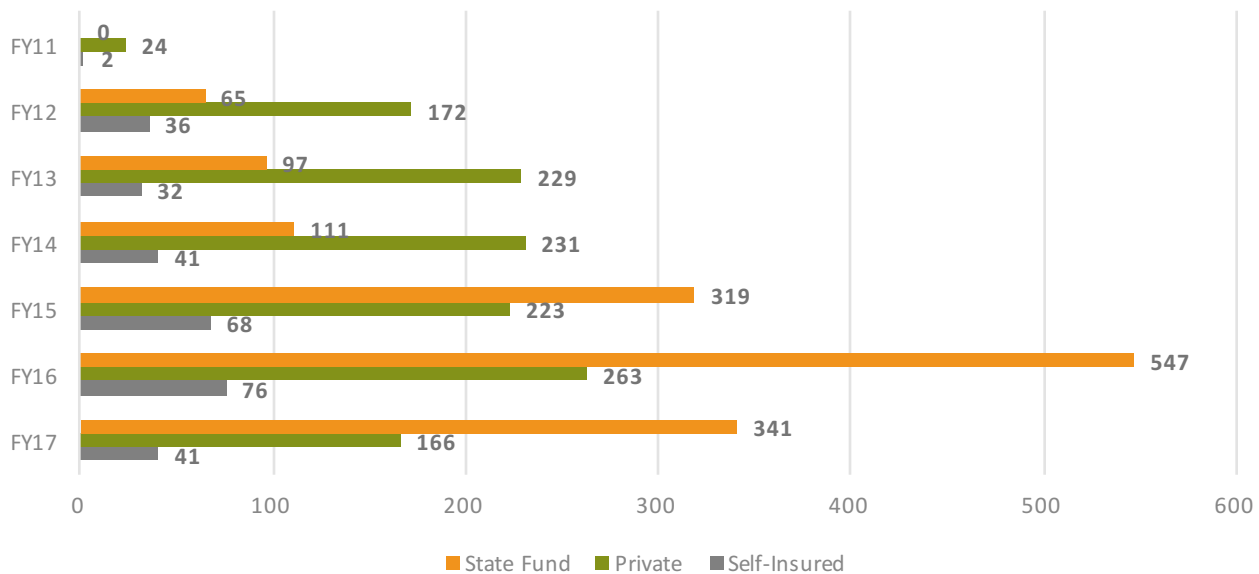
for each payer type. Exhibit 4.27 illustrates the total medical dollars settled by payer, for those settlements (93%) where we could determine the settlement amount allocated for medical. Exhibit 4.28 shows the dollar amounts in ranges settled by all payers. Most claims (76%) were settled for \$30,000 or less.

This settlement is continuing to gain momentum. There have been 3,084 settlements, totaling \$88 million allocated toward medical, from FY11 to FY17. Attorney’s were involved 46% of the time and received \$15 million in attorney fees over the same time period.

*Exhibit 4.26*

### **Number of Settlements for Best Interest<sup>5</sup>**

By Plan Type and Fiscal Year of Decision



## SETTLEMENT OF MEDICAL BENEFITS FOR BEST INTEREST

Exhibit 4.27

### Total Medical Settlement Amounts for Claims Settled for Best Interest

By Plan Type and Fiscal Year of Decision

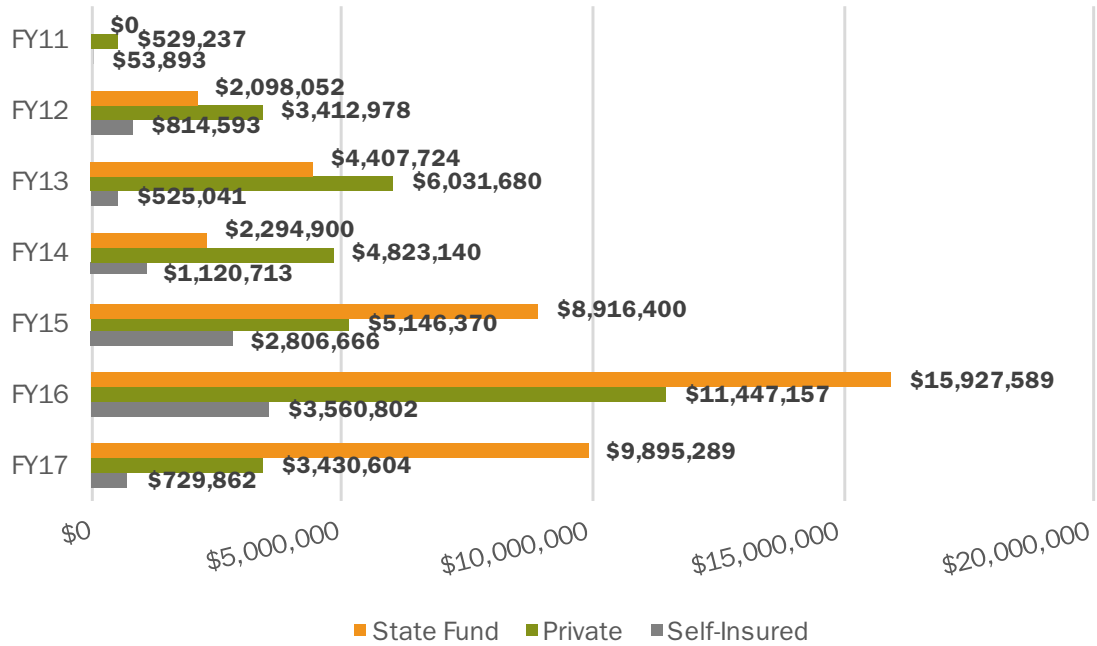
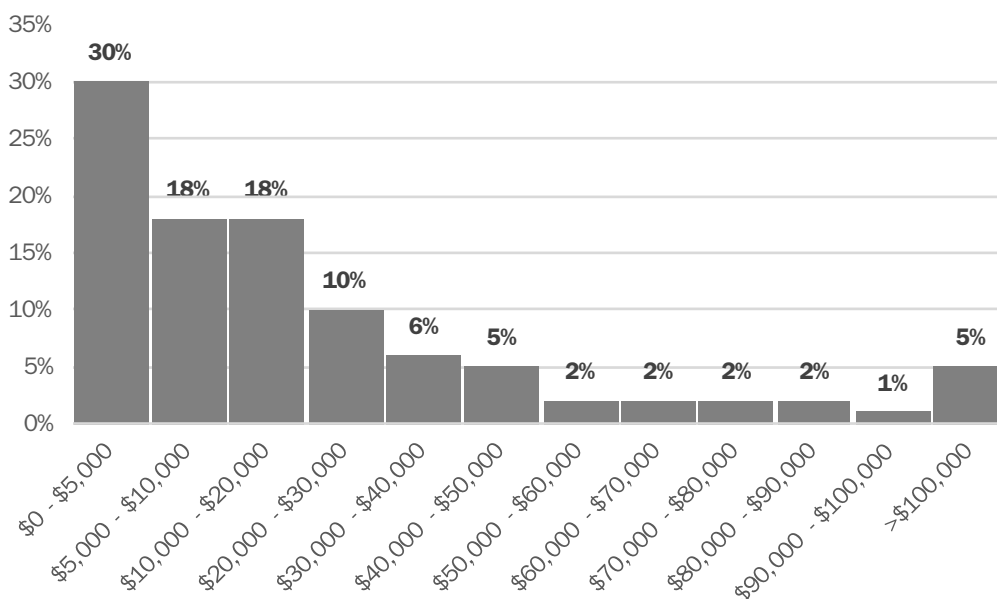


Exhibit 4.28

### Settlement Distribution of Medical for Claims Settled for Best Interest

FY11 to FY17



## INJURED WORKER ATTORNEY FEES

Montana statute requires claimants' attorneys to submit a Legal Fee Report at regular intervals throughout the life of a claim (§39-71-613, MCA). The Legal Fee Report provides the amount of attorney fees received by attorneys, including attorney fees from workers' compensation

settlements. Maximum legal fees are set by rule and regulated by the department (ARM 24.29.3802). The exhibits do not include miscellaneous costs.

Average and total attorney legal fees, by plan type and fiscal year of injury, are shown in Exhibits 4.29 and 4.30.

Exhibit 4.29

### Average Attorney Legal Fees

By Fiscal Year of Injury

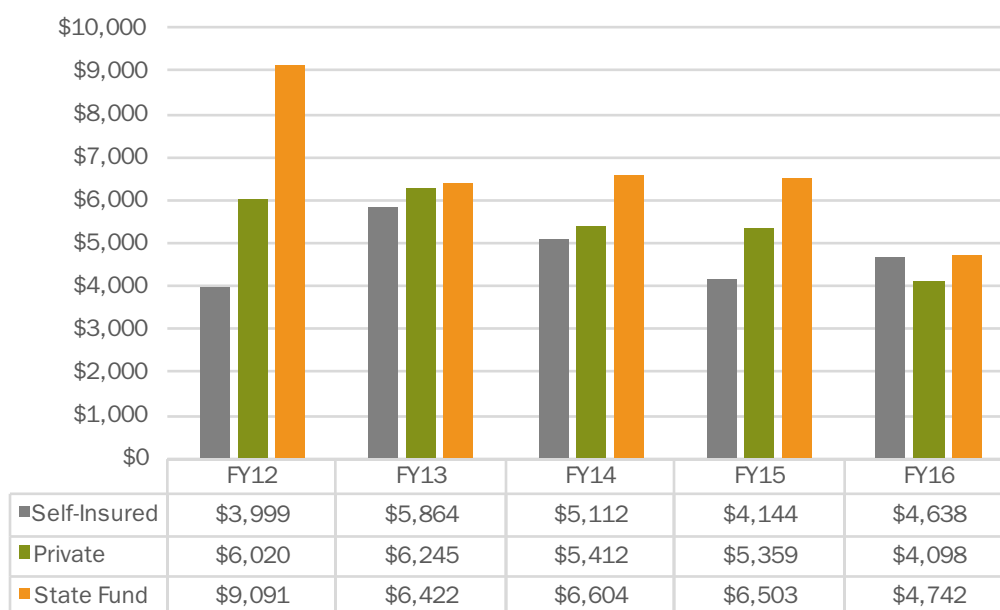


Exhibit 4.30

### Total Attorney Legal Fees

By Plan Type and Fiscal Year of Injury

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Amount	Count	Amount	Count	Amount	Count	Amount	Count	Amount	Count
Self-Insured	\$343,903	86	\$433,967	74	\$306,734	60	\$165,762	40	\$166,959	36
Private	\$1,733,682	288	\$1,935,870	310	\$1,277,262	236	\$1,296,971	242	\$389,326	95
State Fund	\$2,809,025	309	\$1,720,987	268	\$1,934,998	293	\$1,170,478	180	\$474,171	100
UEF	\$20,684	5	\$13,184	4	\$50,857	9	\$29,532	6	\$4,424	4
<b>Total</b>	<b>\$4,907,295</b>	<b>688</b>	<b>\$4,104,008</b>	<b>656</b>	<b>\$3,569,851</b>	<b>598</b>	<b>\$2,662,742</b>	<b>468</b>	<b>\$1,034,880</b>	<b>235</b>



## INJURED WORKER ATTORNEY FEES

The department also collects legal fee information on approved workers' compensation settlements. The table below represents fees claimed in the fiscal year of the approved settlement, regardless of the fiscal year in which the injury or occupational

disease occurred. The following exhibit shows that approximately 61% of all settlements in FY16 involved attorneys, and the average fee in proportion to the settlement amount was 19%.

*Exhibit 4.31*

### **Attorney Fees from Claimant Settlements**

By Fiscal Year of Settlement

	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>
Number of Settlement Petitions Processed	1,762	1,668	1,704	1,825	2,067
Claims Settled with Attorney Representation	1,071	1,001	1,048	1,066	1,259
Percent Claimants Represented by Attorney	61%	60%	62%	58%	61%
Total Settlement Amount with Attorney Involvement	\$45,621,909	\$46,975,691	\$46,943,697	\$57,121,460	\$67,067,013
Total Attorney Fees	\$6,097,382	\$6,025,433	\$6,548,615	\$7,825,299	\$12,420,732
Average Fee/Settlement Percentage	13%	13%	14%	14%	19%

## INSURER LEGAL EXPENSES

Montana administrative rule requires insurance companies to report legal fees and costs associated with each indemnity claim (ARM 24.29.4335 & 24.29.4336). These costs are reported to Employment Relations Division (ERD)

on the subsequent report of injury at regular intervals throughout the life of a claim. Insurer legal expenses are represented in the following two exhibits.

Exhibit 4.32

### Average Insurer Legal Expenses per Claim

By Plan Type and Fiscal Year of Injury



Exhibit 4.33

### Total Insurer Legal Expenses

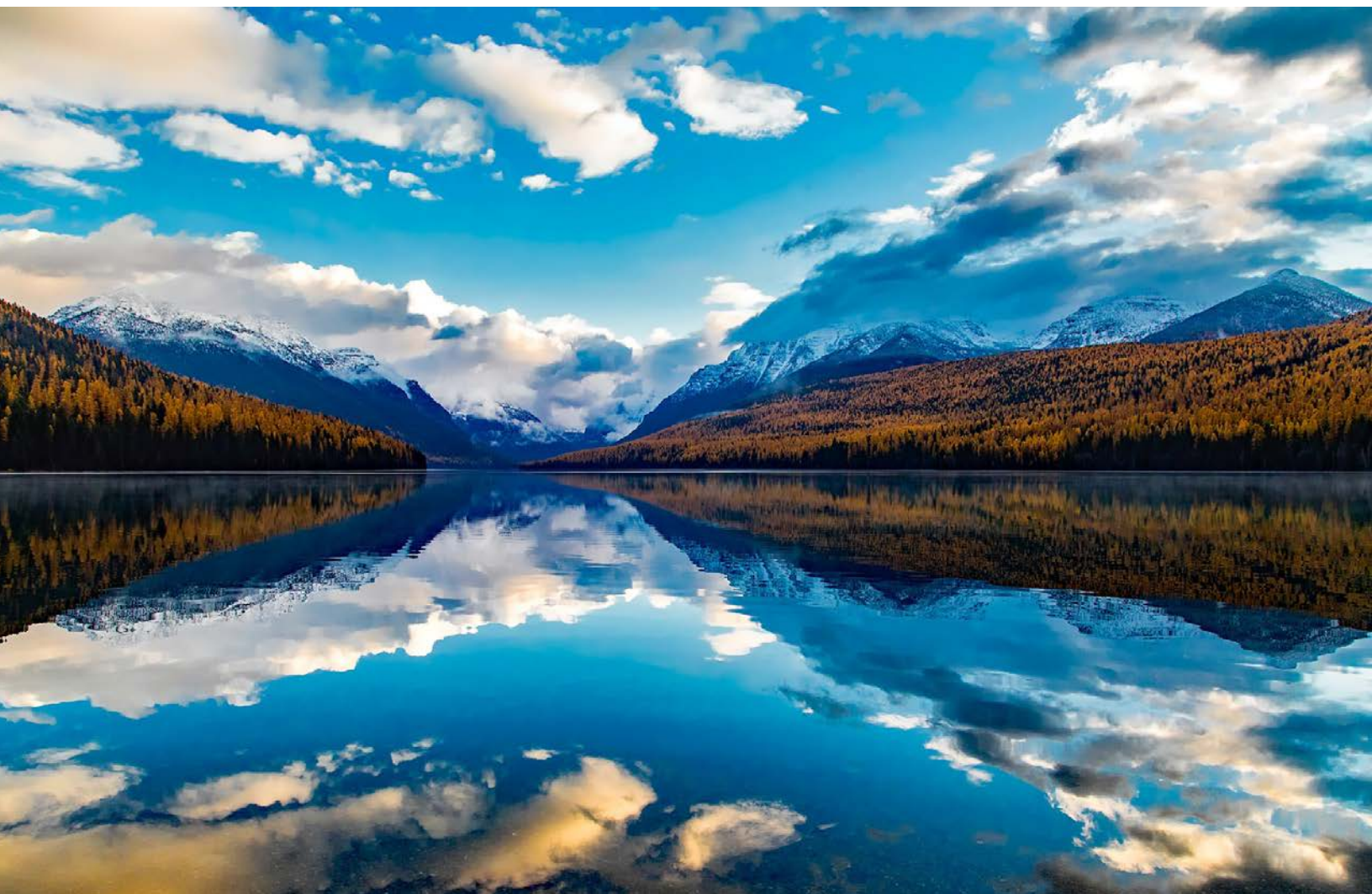
By Plan Type and Fiscal Year of Injury

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Amount	Count	Amount	Count	Amount	Count	Amount	Count	Amount	Count
Self-Insured	\$455,693	106	\$491,837	100	\$277,503	82	\$202,144	66	\$96,935	42
Private	\$1,013,914	291	\$953,551	299	\$707,660	198	\$582,308	190	\$140,290	59
State Fund	\$559,148	217	\$482,388	200	\$573,072	217	\$467,108	166	\$347,822	144
<b>Total</b>	<b>\$2,028,755</b>	<b>614</b>	<b>\$1,927,777</b>	<b>599</b>	<b>\$1,558,235</b>	<b>497</b>	<b>\$1,251,560</b>	<b>422</b>	<b>\$585,047</b>	<b>245</b>

# Dispute Resolution

## Section 5

- Mediation
- Contested Case Hearings
- Workers' Compensation Court
- Significant Workers' Compensation Cases
- Supreme Court Decisions On Workers' Compensation



## MEDIATION

The Workers' Compensation Mediation Unit of ERD administers a mandatory process for resolving disputes concerning benefits for both occupational injury and disease claims. The mediation process is confidential, non-binding and informal. The mediator facilitates the exchange of information between the parties and assists with solutions aimed at resolving the dispute. Conferences are usually by telephone, but can be held in person in Helena upon request. Often more than one conference is held in order to resolve the disputes on a claim.

When resolved at the Mediation level, all parties benefit as the litigation costs on a claim are reduced

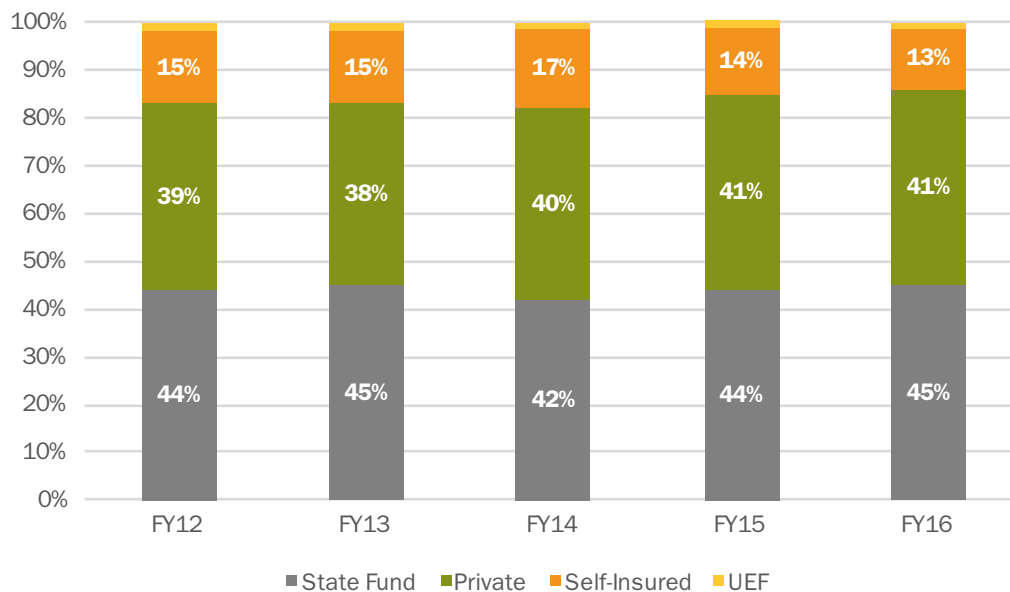
for the insurer and the employer, and the injured worker is able to find resolution more quickly than if he/she had to proceed to the Workers' Compensation Court (WCC). In addition, the costs in time and money for the WCC are also reduced by eliminating cases from the court's docket. If disputes are not resolved at Mediation, the parties may proceed to the WCC.

In FY16, the Mediation Unit received and processed 1,334 petitions, which involved 1,455 claims. A petition is a request for mediation and may include multiple claims, multiple issues and/or multiple insurers.

*Exhibit 5.1*

### Claims in Mediation

By Plan Type and Fiscal Year of Receipt



## Exhibit 5.2

### Claims in Mediation<sup>1</sup>

By Plan Type and Fiscal Year of Receipt

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Count	%	Count	%	Count	%	Count	%	Count	%
Self-Insured	226	15%	200	15%	230	17%	186	14%	192	13%
Private	601	39%	497	38%	554	40%	556	41%	591	41%
State Fund	680	44%	598	45%	585	42%	596	44%	655	45%
UEF	24	2%	22	2%	15	1%	25	2%	17	1%
<b>Total1</b>	<b>1,531</b>	<b>100%</b>	<b>1,317</b>	<b>100%</b>	<b>1,384</b>	<b>100%</b>	<b>1,363</b>	<b>100%</b>	<b>1,455</b>	<b>100%</b>

<sup>1</sup>Total counts represent the number of claims, not the number of petitions.

## MEDIATION

For the past five fiscal years, the mediation process maintained an average resolution rate of 80%. For the same five year period, the average completion time (from receipt of Petition to written

Recommendation) is 34 days for mediations not rescheduled or pended (for additional activity by one or more of the parties), 21 days earlier than allowed by Administrative Rule.

Exhibit 5.3

### Percent of Mediation Petitions Resolved

By Fiscal Year of Receipt

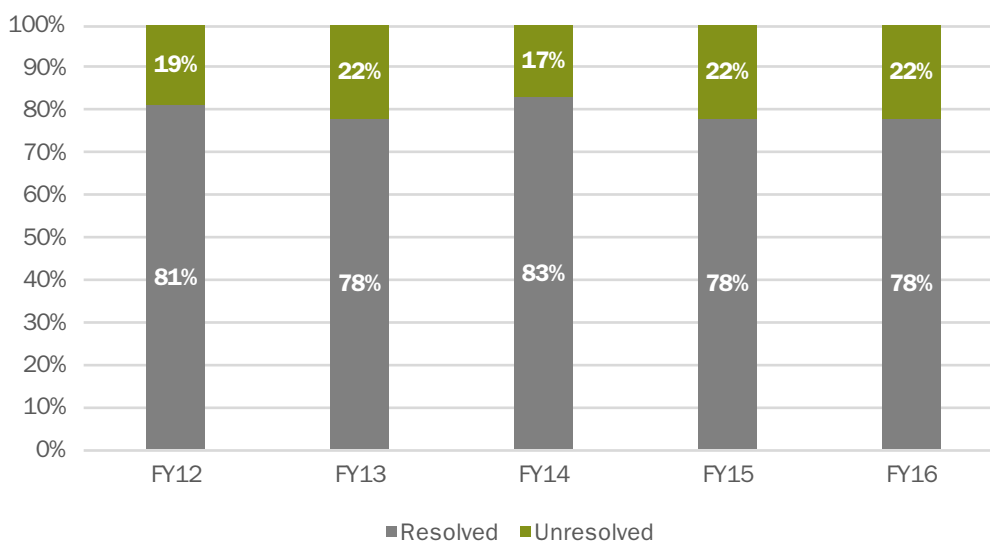


Exhibit 5.4

### Mediation Petitions<sup>2</sup>

By Fiscal Year of Receipt

	FY12		FY13		FY14		FY15		FY16	
Petitions	Count	%	Count	%	Count	%	Count	%	Count	%
Pending <sup>2</sup>	1	0%	5	0%	7	1%	60	5%	77	6%
Closed	1,374	100%	1,207	100%	1,250	99%	1,195	95%	1,257	94%
Total Received	1,375	100%	1,212	100%	1,257	100%	1,255	100%	1,334	100%
Resolved	1,108	81%	943	78%	1,041	83%	942	79%	992	79%
Unresolved	266	19%	264	22%	209	17%	253	21%	265	21%
<b>Total Closed</b>	<b>1,374</b>	<b>100%</b>	<b>1,207</b>	<b>100%</b>	<b>1,250</b>	<b>100%</b>	<b>1,195</b>	<b>100%</b>	<b>1,257</b>	<b>100%</b>

<sup>2</sup>Eventual outcome of pending petitions will affect percent resolved.



## MEDIATION

Disputes brought to mediation cover the entire spectrum of workers' compensation benefit issues. Most often the dispute is between an insurer or insurers and an injured worker. Disputes also occur between the Uninsured Employers' Fund and either

the injured worker or the employer. Exhibits 4.5 and 4.6 show mediations by benefit issue. The detailed subjects included in each category are described in the Appendix under "Mediation Benefit Issues".

*Exhibit 5.5*

### Mediation Petitions

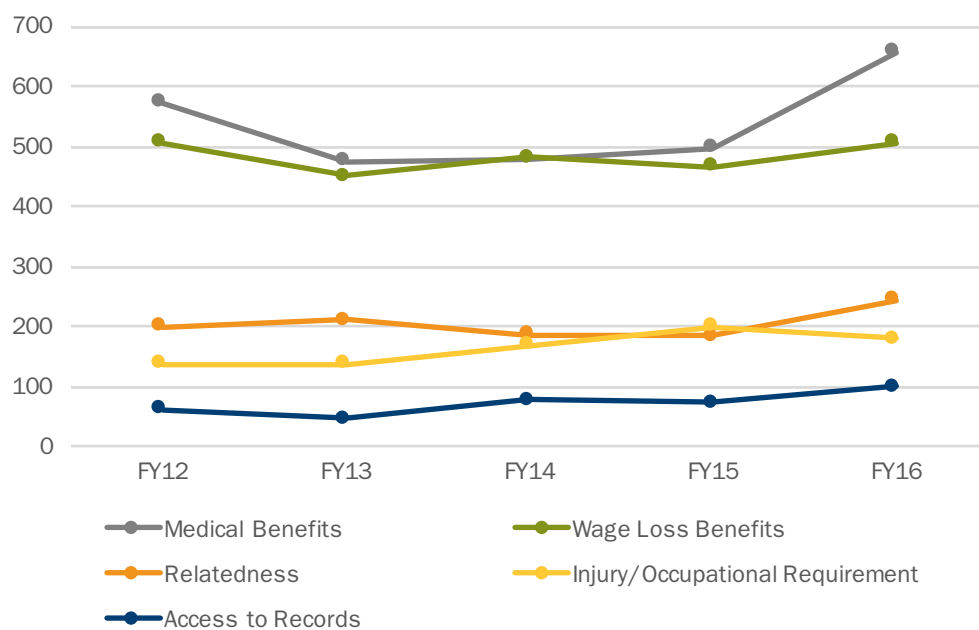
By Benefit Issue and Fiscal Year of Receipt

	FY12	FY13	FY14	FY15	FY16
Medical Benefits	573	476	480	498	658
Wage Loss Benefits	506	452	481	466	506
Relatedness	199	212	187	184	244
Injury/Occupational Requirement	138	138	168	200	181
Access to Records	62	47	78	74	100
Course and Scope	43	63	54	61	66
Notice/Filing Time	87	61	61	54	58
Rehab Benefits	31	22	29	25	38
Employment/Insurance Coverage	28	30	21	36	37
Calculation of Wages	41	30	25	23	25
Other	152	122	99	94	101
<b>Total</b>	<b>1,860</b>	<b>1,653</b>	<b>1,683</b>	<b>1,715</b>	<b>2,014</b>

*Exhibit 5.6*

### Mediation Petitions

By Top 5 Benefit Issues and Fiscal Year of Receipt



## CONTESTED CASE HEARINGS

The DLI Office of Administrative Hearings (OAH) holds contested case hearings, including appeals of Department Orders. For workers' compensation purposes, these appeals most typically include uninsured employer's penalty determinations and

entitlement to benefits from the Subsequent Injury Fund or Silicosis Fund. In FY16, OAH received 6 new request for contested case hearings. The requests were from uninsured employers.

*Exhibit 5.7*

### **Petitions Received by the Office of Administrative Hearings**

By Plan Type and Fiscal Year

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Count	%	Count	%	Count	%	Count	%	Count	%
Self-Insured	0	0%	0	0%	1	33%	0	0%	0	0%
Private	0	0%	0	0%	0	0%	0	0%	0	0%
State Fund	0	0%	0	0%	0	0%	0	0%	0	0%
UEF	0	0%	1	50%	1	33%	1	100%	6	100%
Other	0	0%	1	50%	1	33%	0	0%	0	0%
<b>Total</b>	<b>0</b>	<b>100%</b>	<b>2</b>	<b>100%</b>	<b>3</b>	<b>100%</b>	<b>1</b>	<b>100%</b>	<b>6</b>	<b>100%</b>

## WORKERS' COMPENSATION COURT

The Workers' Compensation Court (WCC) resolves disputes between workers injured as a result of occupational injuries or diseases, and insurers or employers. The court has original jurisdiction over benefit issues arising under the Workers' Compensation Act. For an injury occurring after July 1, 1987, disputes must first be mediated through the ERD Mediation Unit. The court's exclusive jurisdiction also extends to disputes involving

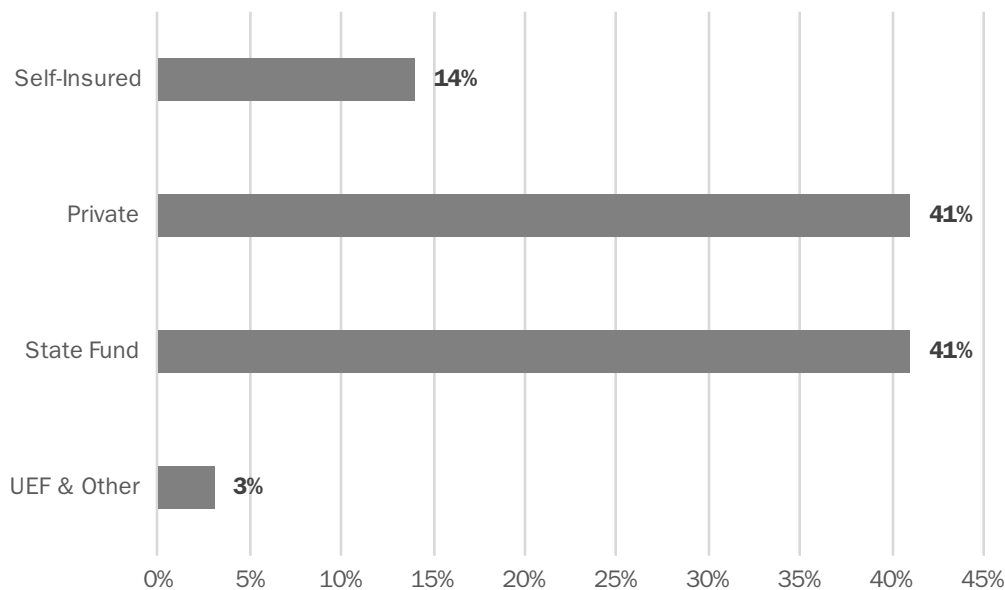
independent contractor exemptions under both the Workers' Compensation and Unemployment Insurance Acts, civil penalties for theft of workers' compensation benefits, and the two-year return to work preference specified in section §39-71-317(2), MCA.

Further information on the Workers' Compensation Court can be found on their website: <http://www.wcc.dli.mt.gov/wcourthome.asp>.

Exhibit 5.8

### Percent of Petitions Received by the WCC – FY16<sup>3</sup>

By Case Type



<sup>3</sup>The Workers' Compensation Act provides for three separate "plans", i.e. Self-Insured, Private Insured, and Montana State Fund. The court breaks down its case types further for statistical purposes, i.e. Self-Insured, Private Insured, Montana State Fund, Subsequent Injury Fund, Uninsured Employers' Fund, Independent Contractor Central Unit (ICCU), and Department of Labor and Industry (DLI).

## WORKERS' COMPENSATION COURT

Exhibit 5.9

### Petitions Received by the WCC<sup>4</sup>

By Case Type and Fiscal Year of Receipt

	FY12		FY13		FY14		FY15		FY16	
Case Type	Count	%	Count	%	Count	%	Count	%	Count	%
Self-Insured	8	4%	26	12%	39	19%	43	19%	31	14%
Private	97	47%	99	45%	82	40%	101	45%	88	41%
State Fund	92	44%	83	38%	76	37%	75	33%	89	41%
UEF & Other	10	5%	10	5%	9	4%	5	2%	7	3%
<b>Total</b>	<b>207</b>	<b>100%</b>	<b>218</b>	<b>100%</b>	<b>206</b>	<b>100%</b>	<b>224</b>	<b>100%</b>	<b>215</b>	<b>100%</b>

<sup>4</sup>Petitions may involve more than one case type.

Exhibit 5.10

### Decisions by the WCC

By Fiscal Year of Receipt

Decisions	FY12	FY13	FY14	FY15	FY16
Decisions	170	199	174	178	213
Substantive Orders	13	40	34	31	23
Orders on Cost	4	7	4	4	0
Bench Rulings without Written Decisions	0	0	0	0	0
Attorney Fee Orders	0	5	1	2	0
Orders on Appeal	0	3	1	0	2
Subtotal	187	254	214	215	238
Petitions Dismissed by Agreement	42	40	52	22	25
<b>Total</b>	<b>229</b>	<b>294</b>	<b>266</b>	<b>237</b>	<b>263</b>

Exhibit 5.11

### Full and Final Compromise Settlements by the WCC

By Case Type and Fiscal Year of Receipt

Case Type	FY12	FY13	FY14	FY15	FY16
Self-Insured	4	1	3	2	6
Private	4	3	11	5	10
State Fund	5	6	7	6	13
UEF & Other	0	0	0	0	0
<b>Total</b>	<b>13</b>	<b>10</b>	<b>21</b>	<b>13</b>	<b>29</b>

## SIGNIFICANT WORKERS' COMPENSATION CASES

Case summaries are taken from the Workers' Compensation Court website: <http://wcc.dli.mt.gov>.

### IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA:

#### **NEW HAMPSHIRE INS. CO. Appellant/Insurer vs. MELISSA MATEJOVSKY Appellee/Claimant, 2016 MTWCC 8**

##### **Order Reversing In Part, Order Directing Medical Examination**

**Summary:** The insurer appeals that portion of the DLI's Order Directing Medical Examination which allows the claimant to videotape an IME. The insurer argues that this Court should reverse the DLI because it does not have authority to impose protective measures on an IME or because there was insufficient evidence for the DLI to order that the claimant be allowed to videotape the IME. The insurer also argues this Court should allow it to suspend the claimant's benefits until she attends the IME.

**Held:** To the extent that the DLI's Order Directing Medical Examination allows Matejovsky to videotape the IME, the order is reversed. Under § 39-71-605(2), MCA, the DLI may set conditions on IMEs and order protective measures when necessary. However, the claimant did not present sufficient evidence to allow her to videotape the examination. The insurer may not suspend the claimant's benefits because she did not unreasonably fail to attend the IME.

#### **TIMOTHY HALL Petitioner vs. NEW HAMPSHIRE INS. CO. Respondent/Insurer, 2016 MTWCC 10**

##### **Order Granting Respondent's Motion To Dismiss And Denying Respondent's Motion To Strike As Moot**

**Summary:** Respondent moved to dismiss the Petition for Hearing, arguing that this Court lacks jurisdiction because Petitioner filed his petition in this Court prior to the issuance of the mediator's Report and Recommendation. Petitioner objected to Respondent's motion, arguing that he could cure any jurisdictional defect because the mediator had issued a Report and Recommendation after Respondent filed its motion to dismiss, and alternatively arguing that

he could file his Petition for Hearing because more than 10 working days had passed since the mediation conference, in accordance with ARM 24.28.108(2).

**Held:** This Court granted Respondent's motion to dismiss. A supplemental pleading cannot cure this jurisdictional defect because it would defeat the purpose of the mediation statutes. Furthermore, since the parties agreed that they pended the mediation to allow them to submit additional evidence for the mediator's consideration, Petitioner failed to prove precisely when the case was no longer in a pending status and that more than 10 working days had passed since the mediation conference.

#### **GLEN A. BRICKMAN Appellant/Claimant vs. AIR TECH HEATING & COOLING INC. Employer; MONTANA STATE FUND Appellee/Insurer, 2016 MTWCC 11**

##### **Appealed To Montana Supreme Court – 08/11/16 Dismissed On Appeal By Stipulation – 10/13/16**

##### **Order Denying Petitioner's Request For Benefits Under § 39-71-610, Mca**

**Summary:** Claimant appeals the order by the DLI denying his request for interim TTD benefits under § 39-71-610, MCA. The DLI denied Claimant's request on the grounds that he continued to receive biweekly compensation benefits because his biweekly compensation benefits were not terminated; rather, his benefits were converted from TTD benefits to PPD benefits.

**Held:** Claimant does not qualify for interim TTD benefits under § 39-71-610, MCA, because he continues to receive biweekly compensation benefits.

#### **DENNIS BARNHART Petitioner vs. LIBERTY NORTHWEST INSURANCE CORPORATION Respondent/Insurer, 2016 MTWCC 12**

##### **Findings Of Fact, Conclusions Of Law, And Judgment**

**Summary:** Petitioner, who has an extensive history of neck injuries, claimed a work-related neck injury in November 2011. Respondent accepted liability and paid benefits. Petitioner and Respondent settled his claim, reserving medical benefits. However, Respondent then ceased paying medical benefits

## SIGNIFICANT WORKERS' COMPENSATION CASES

after an IME examiner opined that Petitioner suffered no injury in the work-related incident. Petitioner thereafter petitioned this Court for reinstatement of his medical benefits.

**Held:** Petitioner's industrial accident permanently aggravated his pre-existing neck condition and, therefore, Respondent remains liable for medical benefits. Although Petitioner has reached MMI, he is entitled to reasonable medical services under § 39-71-704, MCA, and Respondent is liable for those primary medical services Petitioner needs to sustain MMI.

### **JILL MacGILLIVRAY Petitioner vs. MONTANA STATE FUND Respondent/Insurer, 2016 MTWCC 13**

#### **Order Reversing Order Directing Medical Examination**

**Summary:** Petitioner appeals DLI's Order directing medical examination. Inter alia, Petitioner argues that this Court should reverse the order because the Workers' Compensation Court has exclusive jurisdiction to decide issues relating to her claim, and § 39-71-605, MCA, does not provide for multiple IMEs on a denied liability claim. Respondent argues a change in the treating physician's medical opinion and Petitioner's new assertion that she is PTD justify a second IME.

**Held:** DLI did not exceed its statutory authority by ruling on Respondent's motion to compel attendance at an IME; its exercise of jurisdiction was lawful under § 39-71-605(2), MCA. However, it committed reversible error because the first IME physician addressed causation, the treating physician has not changed his opinion, and no evidence indicates Petitioner's condition has changed.

### **MICAH R. HANDY Petitioner vs. MONTANA STATE FUND Respondent/Insurer, 2016 MTWCC 15**

#### **Findings Of Fact, Conclusions Of Law, And Judgment**

**Summary:** Petitioner sought rescission of his settlement, arguing: (1) he did not understand he was fully settling his claim because he did not read the settlement agreement; (2) he could not have understood the settlement agreement if he had read it; (3) he was under economic duress; and (4) the settlement is unconscionable. Respondent

maintains that Petitioner's claim is time-barred and that he has not met his burden of proof.

**Held:** Petitioner's claim is not time-barred. However, Petitioner has presented no viable grounds on which to rescind the settlement. Therefore, the settlement agreement remains in effect.

### **DANIAL FLOYD Petitioner vs. ZURICH AMERICAN INSURANCE CO. OF ILLINOIS Respondent/Insurer, 2017 MTWCC 4**

#### **Findings Of Fact, Conclusions Of Law, And Judgment**

**Summary:** Petitioner claims that he is not at MMI from his December 2014 injury, and that he is entitled TTD and medical benefits from the time Respondent terminated them. Petitioner further claims that he is entitled to reasonable costs, attorney fees, and a penalty. Although Respondent accepted liability for Petitioner's injury, Respondent argues that Petitioner's current complaints are not a result of the incident at work, Petitioner has achieved MMI, and Respondent is no longer liable for benefits. Respondent also contends that its conduct has been reasonable because Petitioner's presentation has been unique.

**Held:** Petitioner proved by a preponderance of the evidence that he suffered a compensable injury and that he has not reached MMI. Petitioner is entitled to TTD and medical benefits from the time Respondent terminated them, and, as the prevailing party, Petitioner is entitled to reasonable costs. Respondent's actions in terminating Petitioner's benefits were unreasonable because it disregarded the treating physician's opinions and seized upon the IME physician's opinions despite their obvious faults. Respondent's actions in failing to reinstate Petitioner's benefits after the IME physician's deposition were unreasonable because the IME physician testified on a more-probable-than-not basis that Petitioner's injury was compensable. Therefore, Petitioner is entitled to attorney fees and a penalty.

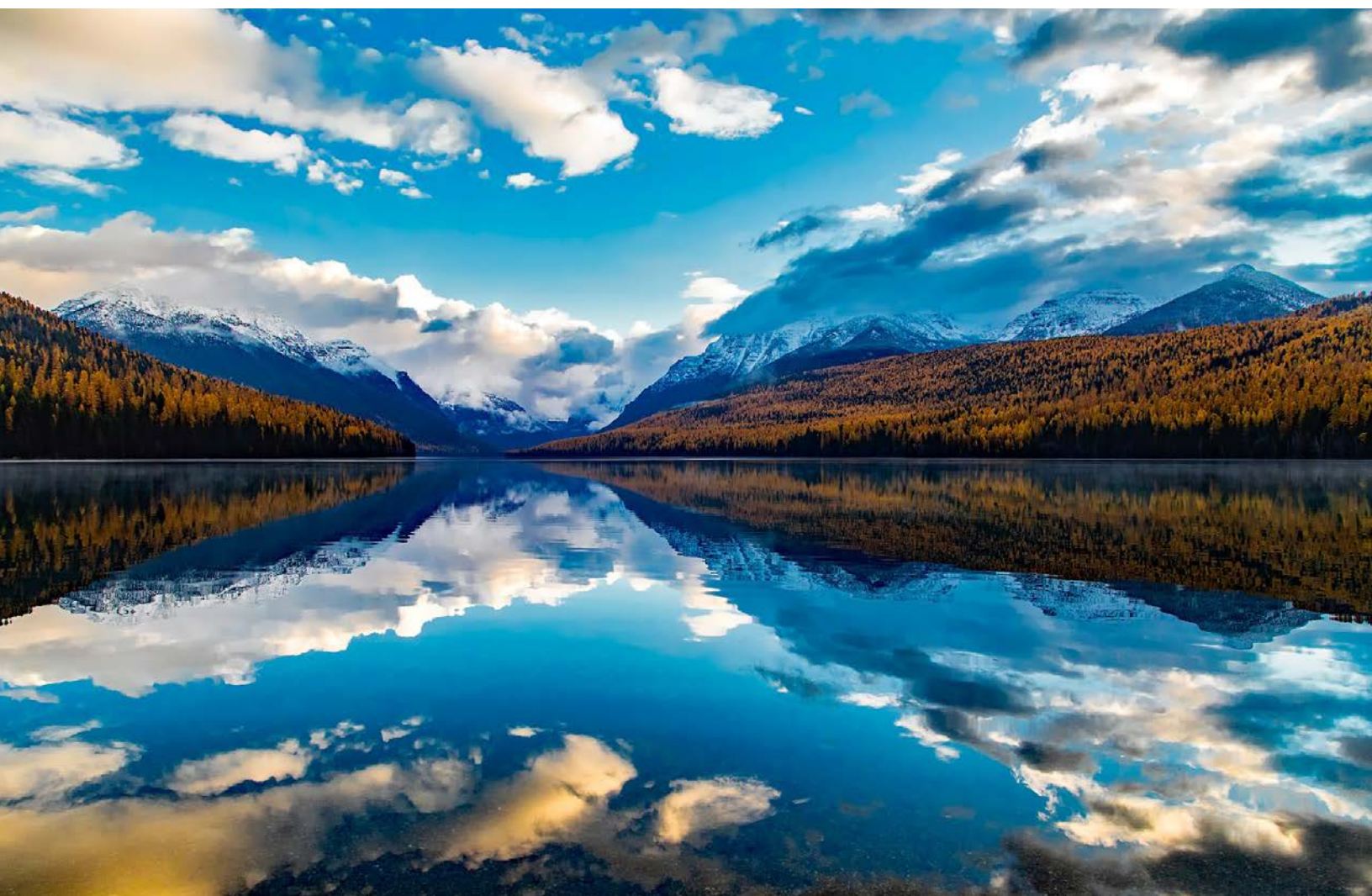


# Department Administered Programs

Section

6

- Workers' Compensation System Administration
- Organizational Charts
- Workers' Compensation Assessments As Expended
- Subsequent Injury Fund
- Uninsured Employers' Fund
- Construction Contractor Registration
- Independent Contractor Exemption Certificates
- Professional Employer Organizations
- Safety & Health
- Stay At Work/Return To Work
- Claims Examiner Certification
- Independent Medical Reviews
- Five-Year Closure Of Medical Benefits





# WORKERS' COMPENSATION SYSTEM ADMINISTRATION

The Employment Relations Division (ERD) provides a wide variety of services and regulations related to workers' compensation and occupational safety and health.

## WORKERS' COMPENSATION REGULATIONS BUREAU

The **Insurance Compliance Unit** regulates private workers' compensation carriers (Plan 2); issues and enforces licenses for Professional Employer Organizations (PEOs); and processes and monitors extra-territorial reciprocal agreements with Washington, Oregon, Idaho, Wyoming, Utah, North and South Dakota. The unit also processes Subsequent Injury Fund (SIF) applications and reimburses insurers for eligible SIF expenses.

The **Construction Contractor Registration Unit** requires construction businesses with or without employees register and comply with workers' compensation requirements. The unit educates the public about the contractor registration program.

The **Independent Contractor Central Unit (ICCU)** educates the public about independent contractors and enforces compliance with the Workers' Compensation Act. It does this through community outreach opportunities, onsite visits, and community wide enforcement activities or 'sweeps'. ICCU issues independent contractor exemption certificates (ICECs), investigates working relationships, and issues decisions on employment status for the Department of Revenue, Labor Standards, Unemployment Insurance, Human Rights, and Uninsured Employers' Fund.

The **Self-Insurance Unit** approves and regulates qualified private and public employers to be self-insured for the purposes of workers' compensation coverage.

The **Uninsured Employers' Fund Unit** enforces coverage requirements for all employers; pays benefits to injured workers whose employers did not have workers' compensation coverage; and manages the fund from which benefits are paid.

## WORKERS' COMPENSATION CLAIMS ASSISTANCE BUREAU

The **Claims Assistance Unit** works closely with workers' compensation insurers and adjusting companies to ensure compliance with statutes and administrative rules. The unit assists injured workers, answering their questions, serving as a liaison between the injured worker and their insurer or adjusting company, and regulating attorney fees. The unit administers the Claims Examiner Certification process, which includes an examination, a two-year certification and renewal process, continuing education credits, and instructor certification. The unit also administers the Stay at Work/Return to Work (SAW/RTW) program, which works with injured workers, employers, insurers, and health care providers to expedite the process of returning an injured worker to work. In situations where the insurer cannot be identified or is not providing assistance, the program will provide the assistance. As of April 2016, the unit, in conjunction with the Medical Regulations Unit, is administering the process for injured workers to request reopening of their medical benefits 60 months from their date of injury.

The **Data Management Unit** is responsible for the collection, data quality, and maintenance of workers' compensation claim and injury information. The unit uses claim data and other information sources to complete a comprehensive annual report on workers' compensation for the Governor, the legislature, and other stakeholders. Unit staff work directly with insurers and third party administrators to ensure compliance with Montana claim reporting requirements and adherence to national standards. The unit also conducts varied research on the workers' compensation system and related topics. Also in the unit is the Montana Occupational Health & Safety Surveillance program (MOHSS) that identifies, tracks, and monitors work-related fatalities, injuries, and illnesses in order to improve worker health and safety in Montana. More information about MOHSS can be found at [www.mtworkerhealth.com](http://www.mtworkerhealth.com).

## WORKERS' COMPENSATION SYSTEM ADMINISTRATION

The **Mediation Unit** is responsible for the statutorily required process to resolve workers' compensation benefit disputes, mitigating the need for filing with the Workers' Compensation Court (WCC). Parties in dispute meet with impartial mediators in a confidential, nonbinding conference to seek resolution. Conference results range from complete resolution/agreement between the parties to negotiated settlement of the claim. If the process is not successful in resolving the issues, a written recommendation is provided and the parties are free to pursue the matter at the WCC.

The **Medical Regulations Unit** provides assistance on all issues relating to the medical regulation of workers' compensation claims, including medical fee schedules, utilization and treatment guidelines, and timeliness of payments. The unit maintains medical fee schedules for providers and payers and ensures access through a web based delivery system. The unit is responsible for the maintenance, annual updates, distribution, and education of the Montana Utilization and Treatment Guidelines. The unit also coordinates with the medical director to conduct independent medical reviews for denied services. The unit certifies injured workers for the Subsequent Injury Fund (SIF) and makes decisions on requested SIF settlements, manages the SIF fund balance, and authorizes payments for eligible SIF expenses. As of April 2016, the unit, in conjunction with the Claims Unit, administers the process for injured workers to request the reopening of their medical benefits.

### SAFETY & HEALTH BUREAU

The **Safety & Health Unit** conducts inspections of public employers and performs on-site consultations for private employers throughout the state. Following an inspection or consultation, the unit provides occupational safety and health training to both public and private employers.

The **Compliance Unit** has jurisdiction over public sector employers, which include state agencies, county, city, public school, and university workers. The goal is to improve worker safety, assist in reducing workplace injuries, and ensure that each public employer provides a safe work environment

for their employees. The unit performs public sector accident and fatality investigations, responds to safety complaints, and performs unannounced workplace inspections. Additionally, the unit audits public sector employers' compliance with the Montana Safety Culture Act (MSCA) and enforces the Montana Occupational Safety and Health Act (OSHA), to include the OSHA 1910 and 1926 safety standards. The unit issues a compliance report that identifies any deficiencies of the MSCA or safety hazards found during an inspection and recommends abatement actions to eliminate the hazard. The unit promotes and shares industry best practices to assist in reducing public sector workplace injuries.

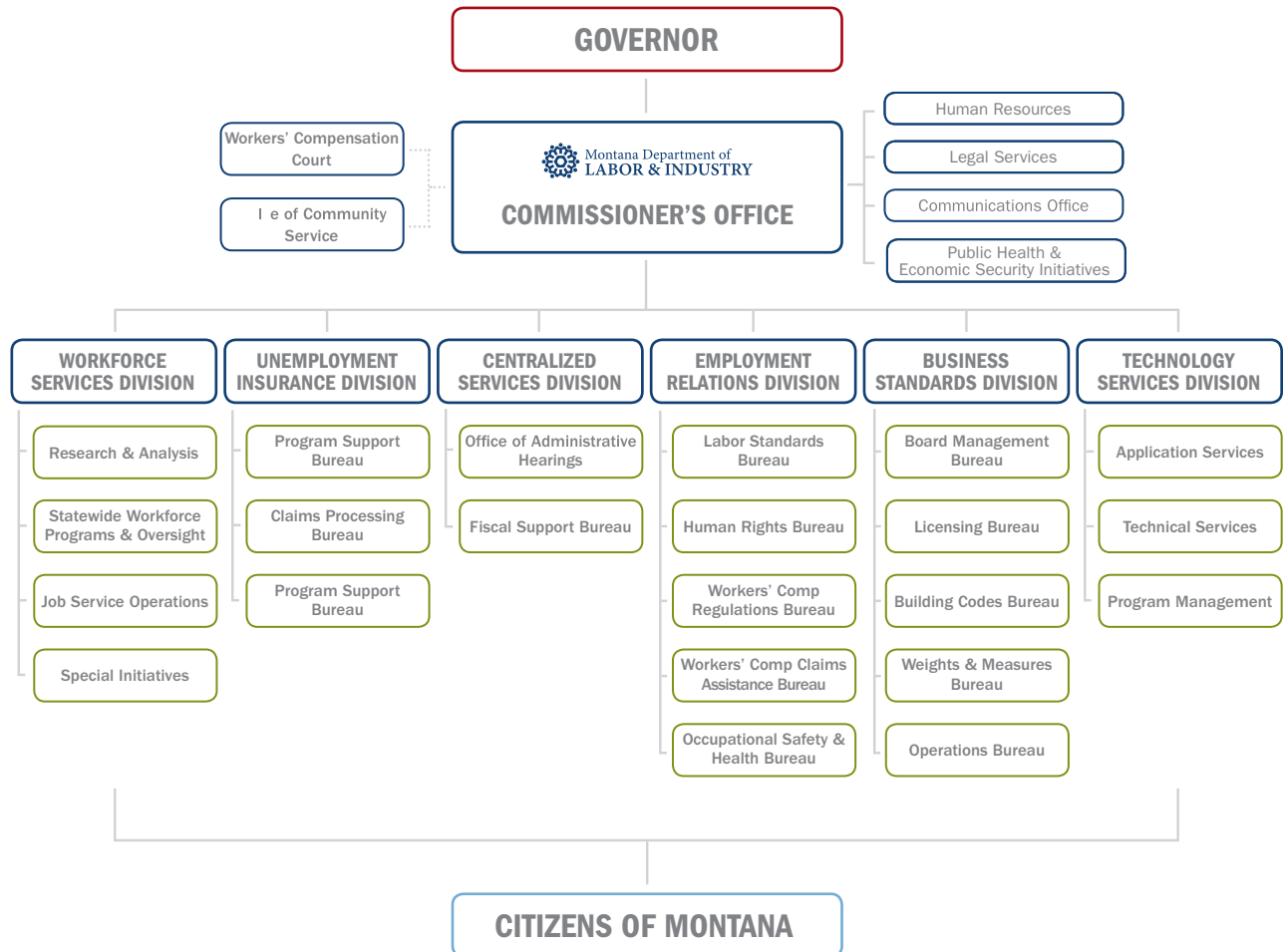
The **Mine Unit** is responsible for safety compliance and consultation in surface and underground coal mines and Mine Safety and Health Administration (MSHA) Part 46 operations, including sand, gravel, and dimensional stone. The unit provides centralized mine safety training throughout Montana. The training includes MSHA Part 48 surface and underground new miner and annual refresher training. Additionally, they provide centralized First Aid/CPR, MSHA training plan development, and Hazwoper refresher training.

The **Outreach and Education Unit** conducts presentations on the Montana Safety Culture Act and employer safety to business related organizations across the state. Young worker focused Occupational Safety and Health Administration (OSHA) 10-hour courses are presented at high schools, colleges, and youth organizations. The unit also conducts Safety-Fests providing free occupational safety and health training to workers and employers through events held around Montana.

# ORGANIZATIONAL CHARTS

Exhibit 6.1

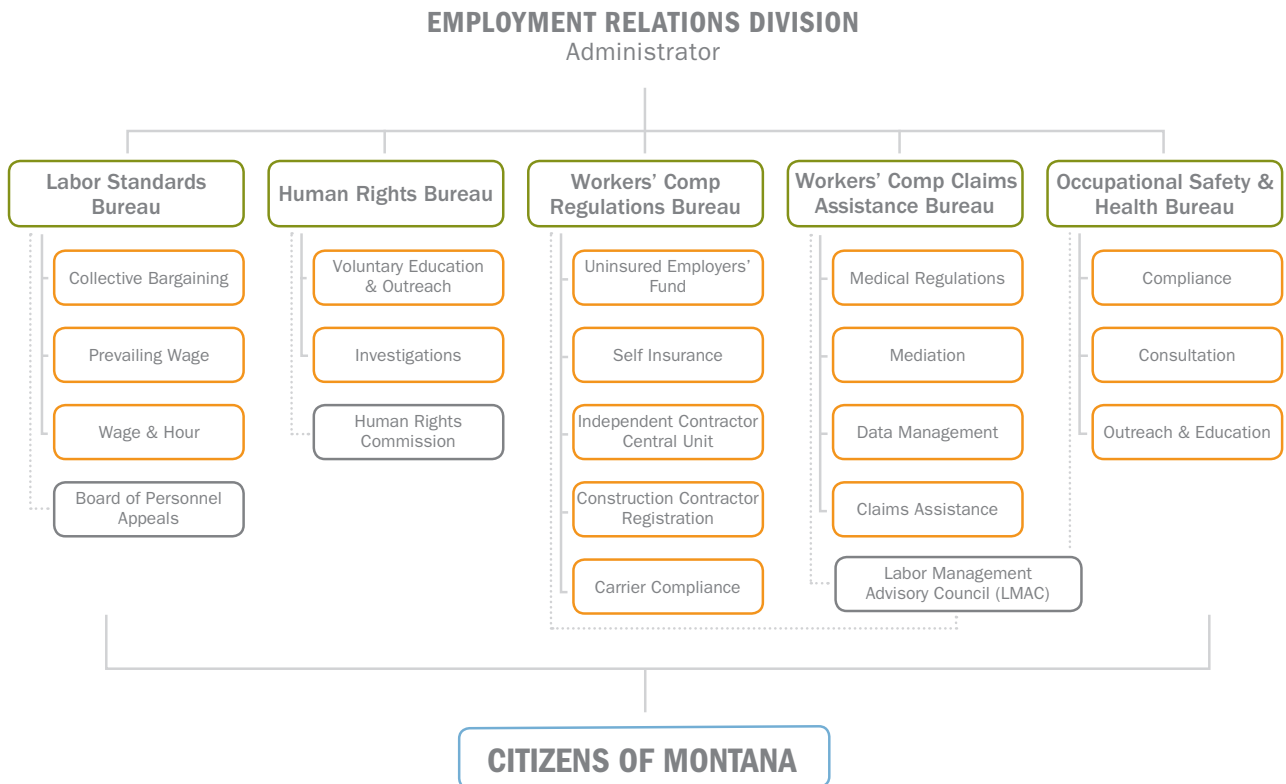
## Montana Department of Labor & Industry



## ORGANIZATIONAL CHARTS

Exhibit 6.2

### Employment Relations Division



## WORKERS' COMPENSATION ASSESSMENTS AS EXPENDED

The administration of the Workers' Compensation Act is funded by an assessment to employers who self-insure and a surcharge paid by employers who are insured by private insurance companies or the Montana State Fund. Section §39-71-201, MCA, provides the administration assessment may be up to 4% of benefits paid during the preceding calendar year for injuries and occupational diseases covered under the Workers' Compensation Act, without regard to the application of any deductible and whether the employer or the insurer pays the losses. Benefits included in the calculation are: (1) compensation benefits paid and (2) medical benefits paid (except payments in excess of \$200,000 per occurrence, which are exempt from the assessment).

DLI functions funded by the administration assessment:

- Legal functions of the Workers' Compensation Court, Office of Administrative Hearings, and Office of Legal Services;
- A portion of the Research & Analysis Bureau in the Workforce Services Division;
- Administration of the Employment Relations Division, including the workers' compensation database;
- Claims management, data analysis, mediation, medical regulations, and administration functions of the Claims Assistance Bureau; and
- Self-insurance, carrier compliance, Professional Employer Organizations (except for a small portion funded by application fees), Managed Care Organizations, and other administration functions of the Workers' Compensation Regulations Bureau

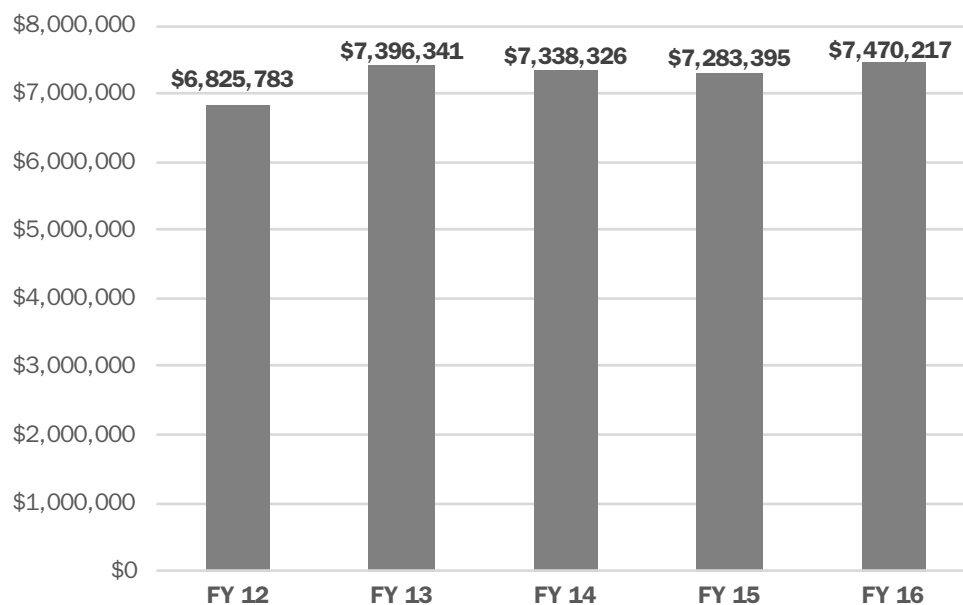
Beginning July 1, 2016, a separate assessment for the occupational safety and health administration fund applies to employers who self-insure and a surcharge paid by employers who are insured by private insurance companies or the Montana State Fund. Section §50-71-128, MCA, provides the safety assessment may be up to 2% of benefits paid during the preceding calendar to fund occupational safety and health administrative and regulatory activities.

## WORKERS' COMPENSATION ASSESSMENTS AS EXPENDED

Exhibit 6.3

### Workers' Compensation Assessments as Expended

By Fiscal Year of Expenditure



## SUBSEQUENT INJURY FUND

The Subsequent Injury Fund (SIF) assists individuals with a permanent impairment that may create an obstacle to employment by offering a financial incentive to employers to hire SIF-certified individuals. Many states have similar funds, sometimes referred to as second injury funds. Montana's program is funded through an annual assessment on Montana self-insured employers and a surcharge on premium paid for private insured and Montana State Fund policyholders.

The Employment Relations Division sets the assessment and surcharge rates annually. The rates are based on the total amount of paid losses reimbursed by SIF in the preceding calendar year, plus the expenses of administration, less other income earned. Covered employers share in the reimbursement of SIF based on the percentage of the compensation and medical benefits paid in Montana by their insurers for April 1st, of the previous fiscal year, through March 31st of the recent year.

The SIF program reduces the insurer's liability by placing a limit of 104 weeks on the amount the insurer will have to pay for medical and wage loss benefits in the event a worker who is SIF-certified becomes injured or re-injured on the job. When the 104 weeks is reached, SIF may assume liability for the claim. The benefit to an insured employer

is that since the insurer's liability is limited to 104 weeks on the claim, it may reduce the employer's modification factor, which in turn may keep premiums lower than would otherwise be the case without SIF. For a self-insured employer, it provides a direct recovery of expenses paid for a workers' compensation claim. If a certified worker does become injured on the job, the worker remains entitled to all benefits due under the Workers' Compensation Act.

### STATUS UPDATE

In FY16 there were 5,044 certified workers in the SIF program, an increase of 22 from FY15. Payments from FY15 to FY16 increased 56%, which is likely due to the increase in the number of Insurers seeking SIF concurrence on settlements.



## SUBSEQUENT INJURY FUND

Exhibit 6.4

### SIF Payments and Dollars Assessed

By Plan Type and Fiscal Year

	FY12		FY13		FY14		FY15		FY16	
Plan Type	Payments	Assessment	Payments	Assessment	Payments	Assessment	Payments	Assessment	Payments	Assessment
Self-Insured	\$110,196	\$59,781	\$375,991	\$82,383	\$31,989	\$127,827	\$44,671	\$216,790	\$109,249	\$126,804
Private	\$153,050	\$147,592	\$278,648	\$65,624	\$219,437	\$365,669	\$287,916	\$514,133	\$151,288	\$268,028
State Fund	\$456,430	\$283,554	\$562,552	\$131,510	\$455,896	\$448,232	\$532,231	\$759,991	\$1,086,556	\$514,657
<b>Total</b>	<b>\$719,676</b>	<b>\$490,927</b>	<b>\$1,217,191</b>	<b>\$279,517</b>	<b>\$707,322</b>	<b>\$941,728</b>	<b>\$864,818</b>	<b>\$1,490,914</b>	<b>\$1,347,093</b>	<b>\$909,489</b>

Exhibit 6.5

### SIF Certified Workers

By Fiscal Year

	FY12	FY13	FY14	FY15	FY16
Applications	140	114	113	82	68
Approvals	83	74	54	37	22
Certified Workers	4,857	4,931	4,985	5,022	5,044

## UNINSURED EMPLOYERS' FUND

The primary roles of the Uninsured Employers' Fund (UEF) are to provide medical and indemnity benefits to employees injured on the job while working for an uninsured employer and to ensure that employers comply with Montana's workers' compensation laws.

The UEF is self-funded. Two forms of revenue are collected from uninsured employers:

**1) Penalties.** UEF levies and collects penalties for the time that the employer was legally required to have a workers' compensation policy until they are in compliance. Penalties can be double the insurance premium that would have been paid by the employer or a flat payment of \$200, whichever is greater. Penalties levied by UEF are based on the cost of the policy that should have been in place during the uninsured period, based on the company's industry code.

**2) Recoupment of benefits paid.** The UEF endeavors to collect from uninsured employers all medical and indemnity benefits paid by UEF on behalf of injured employees.

### STATUS UPDATE

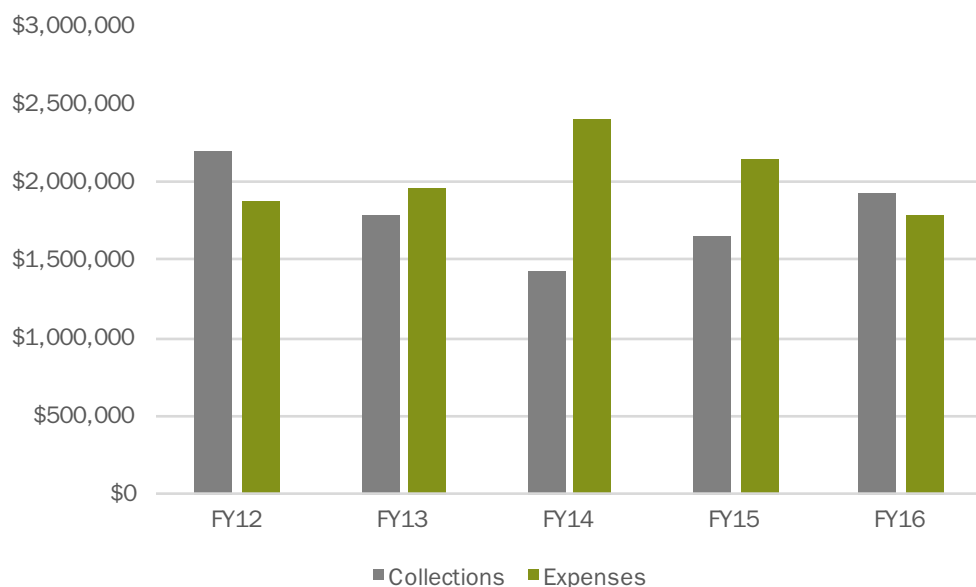
Revenues collected in a fiscal year do not necessarily reflect the penalties or claims costs being assessed for that fiscal year. Revenue includes both current and prior year debts that were successfully collected during the fiscal year. Revenues have declined because ERD has improved its ability to identify uninsured employers and bring them into compliance sooner. This has reduced the penalties imposed, while expenses have remained about the same.

Indemnity benefits paid by UEF to injured employees who worked for uninsured employers decreased from FY15 to FY16 and medical expenses paid also decreased during this period. There were 45 UEF claims in FY15 and 33 in FY16.

Exhibit 6.6

#### Uninsured Employers' Fund - Financial Activity

By Fiscal Year of Payment



## UNINSURED EMPLOYERS' FUND

Exhibit 6.7

### Uninsured Employers' Fund - Financial Activity

By Fiscal Year of Payment

	FY12	FY13	FY14	FY15	FY16
Collections	\$2,193,687	\$1,787,554	\$1,430,236	\$1,659,289	\$1,927,259
Expenses	\$1,873,743	\$1,958,522	\$2,400,458	\$2,148,756	\$1,786,972

EXHIBIT 6.8

### UEF Medical and Indemnity Payments

By Fiscal Year of Payment

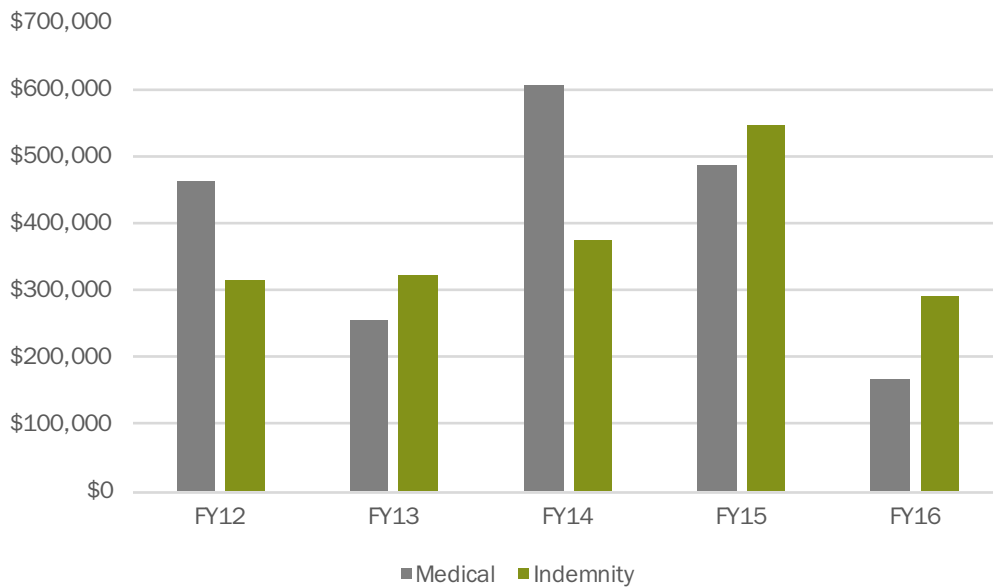


Exhibit 6.9

### UEF Medical and Indemnity Payments

By Fiscal Year of Payment

	FY12	FY13	FY14	FY15	FY16
Medical	\$461,800	\$254,668	\$606,952	\$487,609	\$168,115
Indemnity	\$313,826	\$321,557	\$372,898	\$543,858	\$289,406
Total	\$775,626	\$576,225	\$979,850	\$1,031,467	\$457,521

# CONSTRUCTION CONTRACTOR REGISTRATION

The Construction Contractor Registration (CR) program facilitates the registration of construction contractors working in Montana. All construction contractors working in Montana who have employees, are a corporation, or are a manager-managed limited liability company are required to register. Hiring a registered construction contractor does not guarantee quality assurance, nor does it mean they are licensed, bonded, or tested.

## THE PROGRAM SERVES THREE PRIMARY PURPOSES:

- 1) Verifying the contractor has complied with the workers' compensation insurance laws;**
- 2) Preventing the liability of a workplace injury from moving upward from one contractor to another; and**
- 3) Leveling the playing field by assuring all construction contractors with employees have a Montana workers' compensation insurance policy.**

The CR program works cooperatively with representatives of the building industry and the public to provide education about the registration program and about the hiring of building construction contractors. The education program is accomplished through seminars, presentations, news articles, multi-media campaigns, conferences, and community fairs and shows.

## STATUS UPDATE

In FY16, there were 10,295 active registered contractors and 6,037 new applications. The active contractors with employees totaled 3,837 and the active contractors without employees, 6,458. Contractors without employees are not required to have a workers' compensation policy.

In the construction industry in Montana, out-of-state workers' compensation coverage is not sufficient coverage for an out-of-state contractor wanting to do business in Montana. The out-of-state construction contractor must have a workers' compensation policy specific to Montana if doing business in Montana. An out-of-state company can bid on a job in Montana and ask for a bid only registration but if the contractor gets the job, they must obtain coverage before they start working and change their registration to active from bid only. In FY16, there were 445 bid only contractors.

Five penalties, up to a maximum of \$500, were issued in FY16, for one of the following reasons: performing work as a construction contractor without being registered; performing work as a construction contractor when the construction contractor's registration is suspended; transferring a valid registration to an unregistered construction contractor; or allowing an unregistered construction contractor to work under a registration issued to another construction contractor.

The website [www.mtcontractor.com](http://www.mtcontractor.com) provides more information on construction contractor registration in Montana.

### Exhibit 6.10

#### Registered Construction Contractor Applications

By Fiscal Year

	FY12	FY13	FY14	FY15	FY16
Applications Received	6,019	4,953	5,919	5,112	6,037
Active Contractors	9,546	9,940	9,759	9,996	10,295
Bid Only Contractors	693	598	498	428	445
Contractors with Employees	6,154	4,713	4,128	3,347	2,922

# INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATES

An Independent Contractor Exemption Certificate (ICEC) allows the owner of a business to exempt themselves from workers' compensation coverage by applying for and receiving an ICEC for the specific occupation in which they want to work as an independent contractor. A business owner may be a sole proprietor, working partner of a partnership, working partner of a limited liability partnership, a working member of a member-managed limited liability company (LLC), or a working manager of a manager-managed LLC (in the construction industry). A manager of a manager-managed LLC (not in the construction industry) and a corporate officer of a corporation with more than 20% of the shares in the corporation or 20% ownership in the LLC may apply for an ICEC.

ICECs are issued through the Independent Contractor Central Unit (ICCU). It is the intent of the program to assure only those individuals who are truly established in a business will receive an ICEC and those who hire them can rely on the certificate as conclusive proof the worker is an independent contractor. The ICEC is valid for two years unless it is revoked, denied, or suspended.

Certificates may be suspended if control is exerted over the worker by the hiring agent, and that is enough to destroy the independent contractor relationship. They may also be revoked if a certificate holder fails to cooperate with the Department.

## STATUS UPDATE

In FY16, 304 investigations took place across the state either affirming independent contractor relationships or requiring employers to obtain workers' compensation policies. The Department revoked 11 exemption certificates in FY16, compared to 17 in FY15, for failure to cooperate with Department's investigation.

One goal of the program is to educate the public of the rights and responsibilities of being an independent contractor or hiring one. Annual outreach and education is provided through seminars, presentations, home show participation, news articles, multi-media campaigns, conferences, and county fairs.

The very last resort for the Department is penalty enforcement and this applies to either the worker, the hiring agent, or both. In FY16, there were 19 penalties, ranging from \$250 to \$1,000, for a total of \$11,250. The Department waived 2 penalties and collected \$1,750.

In FY16, there were 19,883 active ICECs and 10,850 applications received of which 10,602 were approved, 237 denied, and 11 revoked. Failure to provide a complete application was the primary reason for the denials. Over half (60%) of the total applications received in FY16 were from the construction industry. administrative and support and waste management and remediation services accounted for 11%, transportation and warehousing 8%, professional, scientific and technical services 6%, agricultural, forestry, fishing & hunting 4%, arts, entertainment and recreation 4%, other services (except public administration) 3%, health care and social assistance 3%, and miscellaneous industries 1%.

The website [www.mtcontractor.com](http://www.mtcontractor.com) provides more information on independent contractors in Montana.

## INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATES

Exhibit 6.11

### Independent Contractor Exemptions

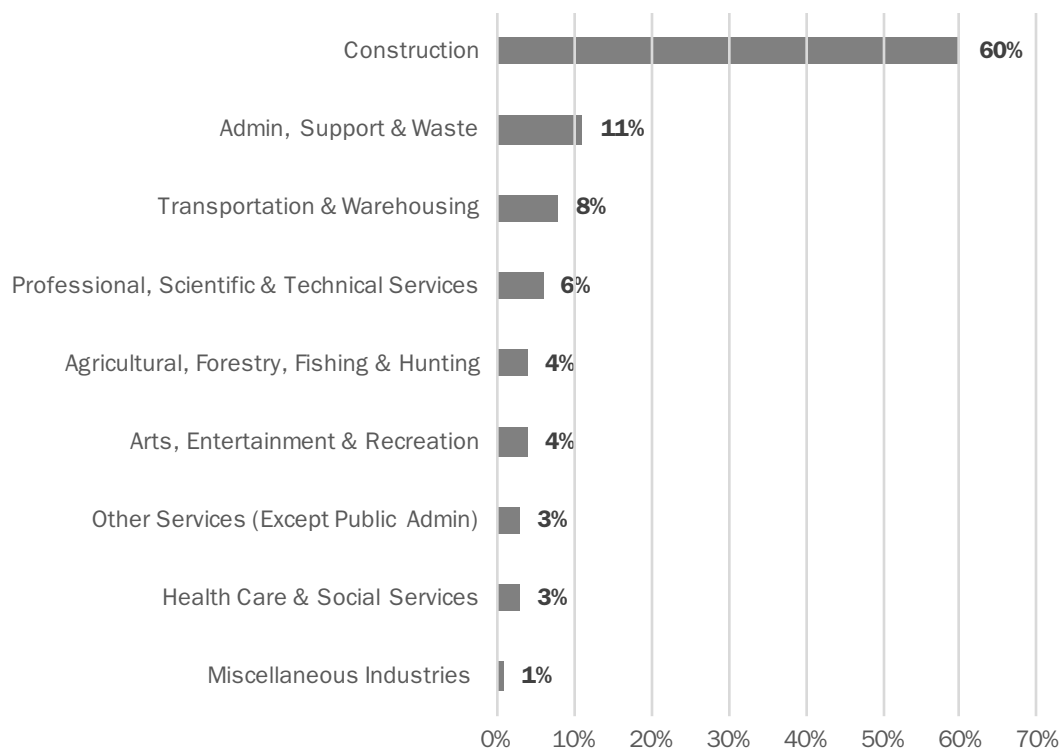
By Fiscal Year

	FY12	FY13	FY14	FY15	FY16
Applications Received	9,587	8,947	9,865	9,964	10,850
Active ICEC's	17,689	17,805	17,865	18,870	19,883

Exhibit 6.12

### Independent Contractor Exemptions Applications – FY16

By Industry



## PROFESSIONAL EMPLOYER ORGANIZATIONS

A Professional Employer Organization (PEO) is a business that contracts employment services to other businesses. Once contracted, the PEO becomes the employer of record, and, as such, is legally responsible for the hiring, firing, payment, insurance, taxation, and regulation of all the employees subject to the agreement between the PEO and the employers. PEOs are required to be licensed by the Department.

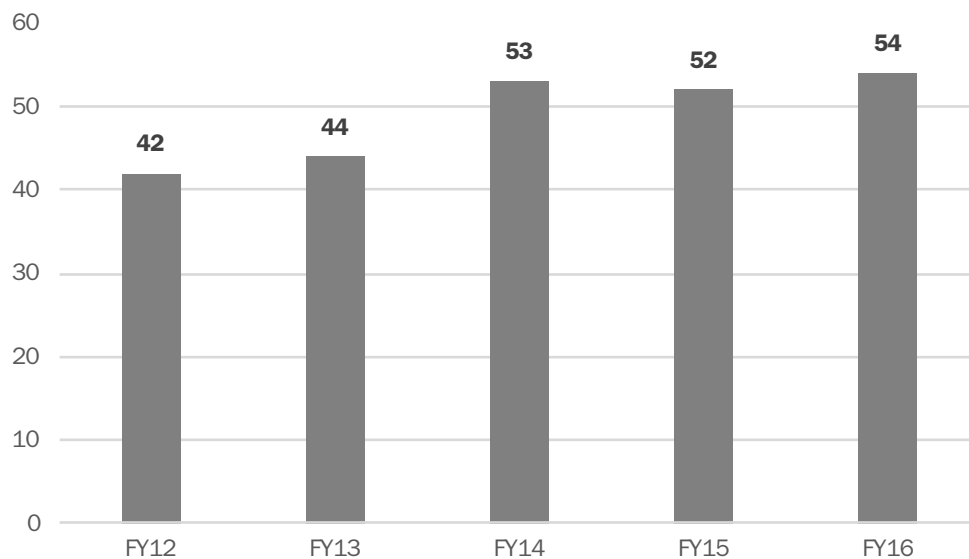
The legislature recognizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

In FY16, the Department licensed 54 PEO's, with 624 active PEO Employers, who had 4,611 leased employees.

*Exhibit 6.13*

### **Licensed Professional Employer Organizations**

By Fiscal Year





## PROFESSIONAL EMPLOYER ORGANIZATIONS

Exhibit 6.14

### Number of Active PEO Employers

By Fiscal Year

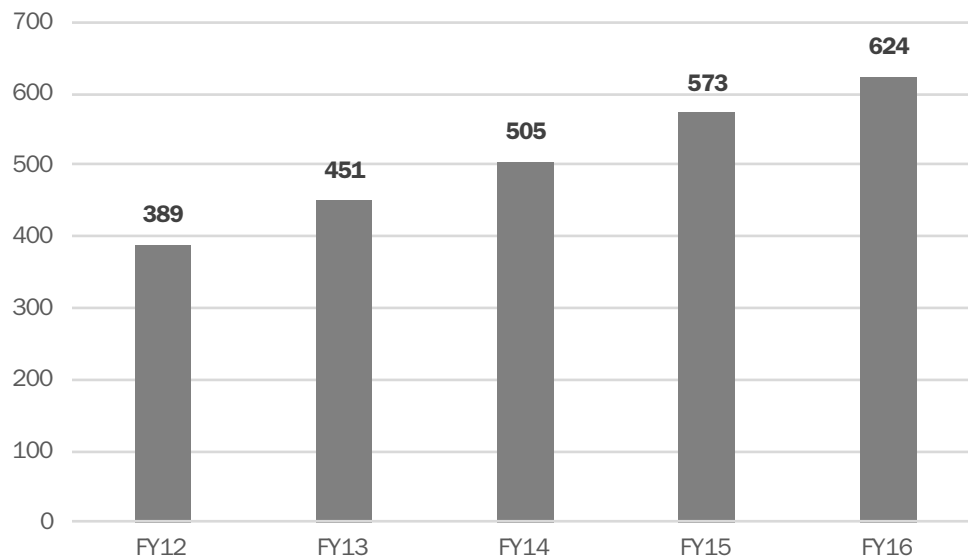
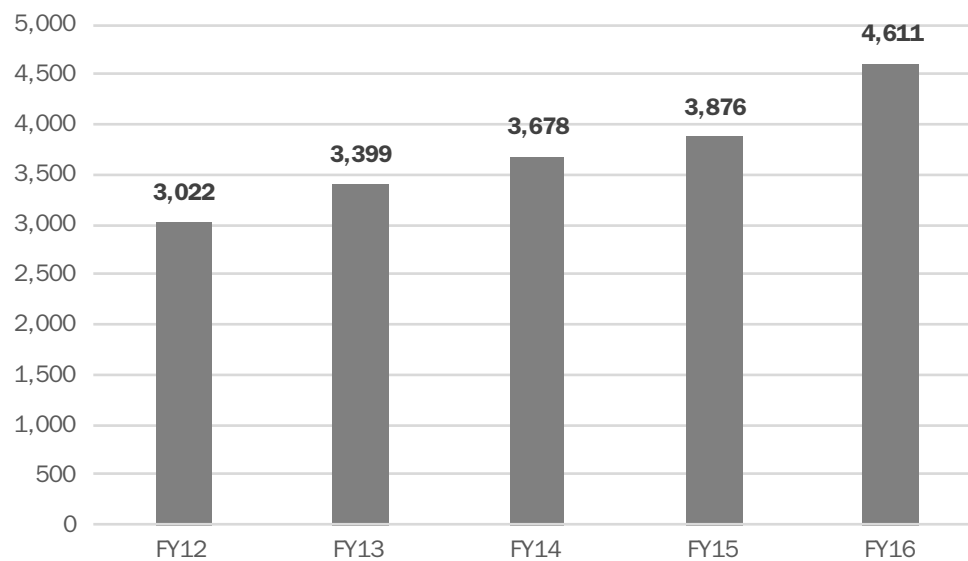


Exhibit 6.15

### Leased Employees - Average Quarterly Count

By Fiscal Year



## SAFETY & HEALTH

The purpose of the Safety and Health Bureau (SHB) is to raise Montana employers and employees level of awareness about workplace safety and health through inspection, consultation, technical assistance and training.

### CONSULTATION

The Consultation Program provides on-site consultation services to both private and public sector; this includes small companies and city, county, and state entities. The goal is to help identify and correct safety and health hazards to reduce potential accidents, injuries, and monetary penalties from regulatory bodies. In FY16, the consultation program had four safety consultants and four industrial hygienists. In the exhibits below, 'visits' are hazard investigations and 'interventions' involve education.

*Exhibit 6.16*

#### **Public Employer Consultation Activities** By Fiscal Year

	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>
State Government	19	13	45
County Government	9	9	19
City Government	6	12	21
College/Public Schools	6	8	14
Total Visits	40	42	99
Total Interventions	89	80	89

*Exhibit 6.17*

#### **Private Employer Consultation Activities** By Federal Fiscal Year

	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>
Number of Employees covered	21,928	12,754	24,899
Number of Hazards Identified in work place	767	486	1,154
Total Visits	218	228	294
Total Interventions	145	95	111

**OUTREACH AND EDUCATION**

The Outreach & Education Unit works to reduce Montana’s high injury, illness and fatality rates by assisting employers through free education and training. In addition to helping Montana employers, the unit also targets young workers, who are more at risk, by offering Occupational Safety & Health Administration (OSHA) 10-hour training to high schools, colleges, and youth-related organizations across the state. During FY16, the SHB held 68 OSHA 10-Hour classes for 1,084 students.

SafetyFestMT is perhaps the Department’s largest educational outreach effort. The Safety and Health Bureau (SHB) hosts four events a year in both rural and urban communities throughout Montana. This free event is geared towards both employers and their employees, offering classes on a variety of topics. Of those that attended SafetyFestMT during FY16, 62% (814) were from the private sector and 38% (492) were from the public sector. The top three industries represented by attendees were construction, manufacturing, other except public administration, and health care and social assistance.

*Exhibit 6.18*  
**SafetyFestMT – FY16**

City	Number of Attendees	Number of Classes
Missoula	589	47
Bozeman	263	35
Miles City	185	35
Great Falls	269	49
Total	1,306	166

Sector	Number of Attendees
Public	492
Private	814
Total	1,306

**MINE SAFETY**

The SHB, under the Montana Coal Mine Safety Act (§50-73-101, MCA), is responsible for workplace safety and health compliance in underground and surface coal mines. They conduct mine safety inspections and assist mine operators in safety training plan development. The SHB also inspects sand and gravel operations, under §50-72-101, MCA.

The SHB partners with contractors to ensure Mine Safety and Health Administration (MSHA) compliance and works with multiple county, state and federal agencies to assist in accident investigations and safety. Under a grant from MSHA, the Bureau provides CPR training and certification, new miner training, annual refresher courses, as well as Hazwoper annual refresher at centralized training facilities throughout the state.

*Exhibit 6.19*  
**Mine Safety Activities**  
By Fiscal Year of Activity

	FY15	FY16
Coal Mine Inspections	12	12
Sand & Gravel Inspections	120	77
Classes Taught (Metal/Nonmetal/Coal)	87	57

PUBLIC SECTOR SAFETY

The SHB, under the Montana Occupational Safety and Health Act (§50-71-114, MCA), is responsible for workplace safety and health compliance for public sector employers. They conduct unannounced workplace inspections and share industry best practices with public sector employers. In previous years, a shortage of staff denoted fewer inspections.

Exhibit 6.20  
**Public Sector Safety Activities**  
By Fiscal Year of Activity

	FY15	FY16
Inspections	3	205
Interventions	34	25

MONTANA SAFETY CULTURE ACT

The Montana Safety Culture Act enacted by the 1993 Montana State Legislature encourages workers and employers to come together to create and implement a workplace safety philosophy. It is the intent of the act to raise workplace safety to a preeminent position in the minds of all Montana’s workers and employers. It is the responsibility of employers to participate in the development and implementation of safety programs that will meet the specific needs of their workplace.

The SHB helps employers establish or strengthen a safety program appropriate to their business and employees’ needs by incorporating the Montana Safety Culture Act.

## STAY AT WORK/RETURN TO WORK

The 2011 Legislature directed Stay at Work/Return to Work (SAW/RTW) assistance be made available to injured workers upon request (§39-71-1041, MCA). The goal of the assistance is to minimize disruption caused by a work-related injury or disease by assisting the worker to return to the same position with the same employer or a modified position with the same employer as soon as possible after an injury or occupational disease occurs.

The SAW/RTW Assistance Program outreach in FY16 included training through 4 SafetyFestMT events, 15 Assistance to Business Clinics, and 3 presentations by request. Since the program's implementation on July 1, 2012, 738 workers requested assistance by

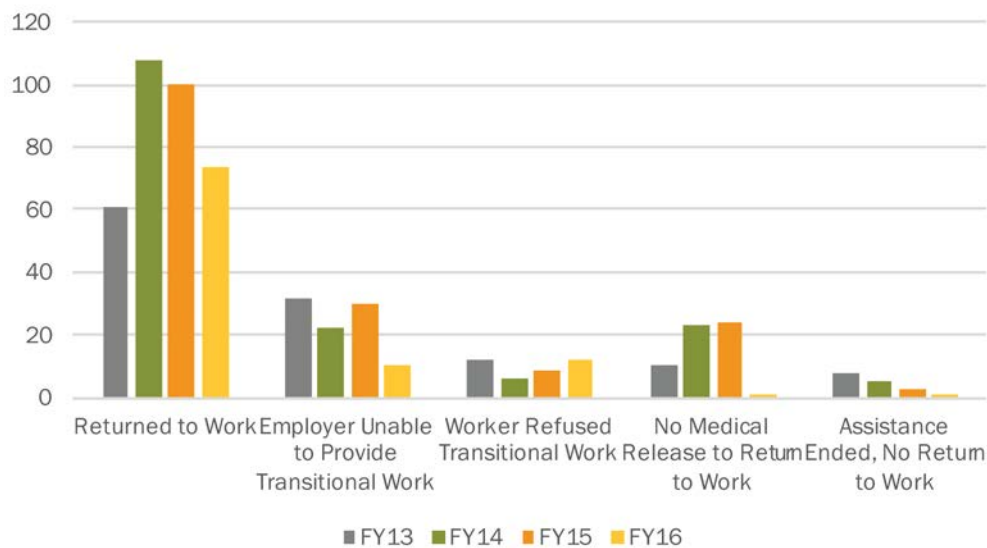
contacting their workers' compensation insurer (as reported) or the Department. SAW/RTW assistance was requested by 571 workers. Known outcomes for these requests are:

- 343 injured workers returned to work with time of injury employer
- 94 employers determined they could not provide transitional employment
- 39 injured workers refused transitional work
- 58 injured workers could not get a medical release to return to work
- 17 requests for assistance ended without a return to work

Exhibit 6.21

### Stay at Work/Return to Work Program Outcomes

By Fiscal Year



## CLAIMS EXAMINER CERTIFICATION

The 2009 Legislative Session passed the voluntary Claims Examiner Certification process (§39-71-320, MCA). This legislation establishes standards for the voluntary certification of workers' compensation claims examiners in the State of Montana. It provides minimum qualifications, an examination, a two-year certification and renewal process, continuing education requirements, and standards for the qualifications of instructors.

*Exhibit 6.22*

### **Claims Examiner Certification Activities**

By Fiscal Year

	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>
Total Examiners Certified as of FY End	*	*	124	136	159	157
New Examiners Certified	89	8	10	14	17	25
Examiners that took the Examination	3	8	10	14	17	29
Courses Approved	15	32	48	50	65	72

*\*No data available.*

## INDEPENDENT MEDICAL REVIEWS

An Independent Medical Review (IMR) is an informal, alternative dispute resolution process to address denial of medical services when:

- 1) treatment was not specifically addressed or recommended by the Montana Guidelines;**
- 2) treatment was requested after Maximum Medical Improvement (MMI);**
- 3) treatment went beyond the duration and frequency limits set out in the Guidelines; or**
- 4) the Guidelines require prior authorization.**

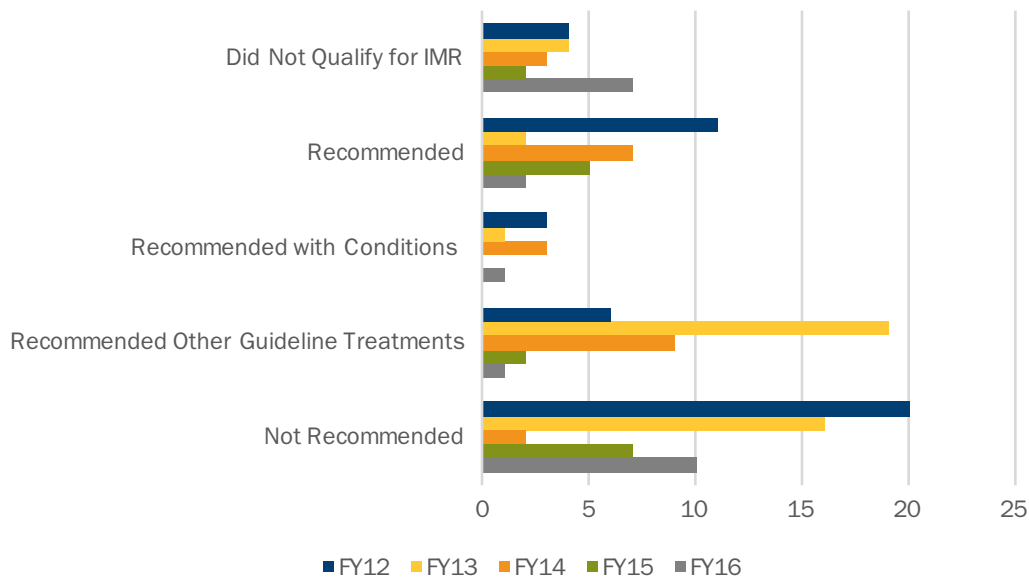
IMRs may be requested by the physician, injured worker, insurer, or injured worker representative. IMRs apply to medical services provided on or after July 1, 2011. Decisions are not binding on the parties. The Department's medical director reviews requests and issues decisions.

In FY16, the majority of requests (33%) were from insurers, then providers (29%), injured workers (29%), and worker representatives (10%). The number of requests have decreased by 52% from FY12 to FY16. This is primarily due to fewer requests from insurers, which could be attributed to the increase in knowledge of the Montana Utilization and Treatment Guidelines by insurers and claims administrators.

Exhibit 6.23

### Total Independent Medical Reviews<sup>1</sup>

By Resolution and Fiscal Year



<sup>1</sup>An example of "Recommended with Conditions" could be that a claimant needs to complete smoking cessation prior to surgery



## INDEPENDENT MEDICAL REVIEWS

Exhibit 6.24

### Total Independent Medical Reviews

By Resolution and Fiscal Year

	FY12		FY13		FY14		FY15		FY16	
Independent Medical Reviews	Count	%	Count	%	Count	%	Count	%	Count	%
Not Recommended	20	45%	16	38%	2	8%	7	44%	10	48%
Did Not Qualify for IMR	4	9%	4	10%	3	13%	2	13%	7	33%
Recommended	11	25%	2	5%	7	29%	5	31%	2	10%
Recommended Other Guideline Treatments	6	14%	19	45%	9	38%	2	13%	1	5%
Recommended with Conditions	3	7%	1	2%	3	13%	0	0%	1	5%
<b>Totals</b>	<b>44</b>	<b>100%</b>	<b>42</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>16</b>	<b>100%</b>	<b>21</b>	<b>100%</b>

Exhibit 6.25

### Independent Medical Reviews

By Type of Requestor and Fiscal Year

	FY12		FY13		FY14		FY15		FY16	
Requestor	Count	%	Count	%	Count	%	Count	%	Count	%
Insurer	36	82%	33	79%	20	83%	10	63%	7	33%
Physician Provider	4	9%	6	14%	4	17%	3	19%	6	29%
Injured Worker	1	2%	2	5%	0	0%	3	19%	6	29%
Injured Worker Representative	3	7%	1	2%	0	0%	0	0%	2	10%
<b>Totals</b>	<b>44</b>	<b>100%</b>	<b>42</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>16</b>	<b>100%</b>	<b>21</b>	<b>100%</b>

## FIVE-YEAR CLOSURE OF MEDICAL BENEFITS

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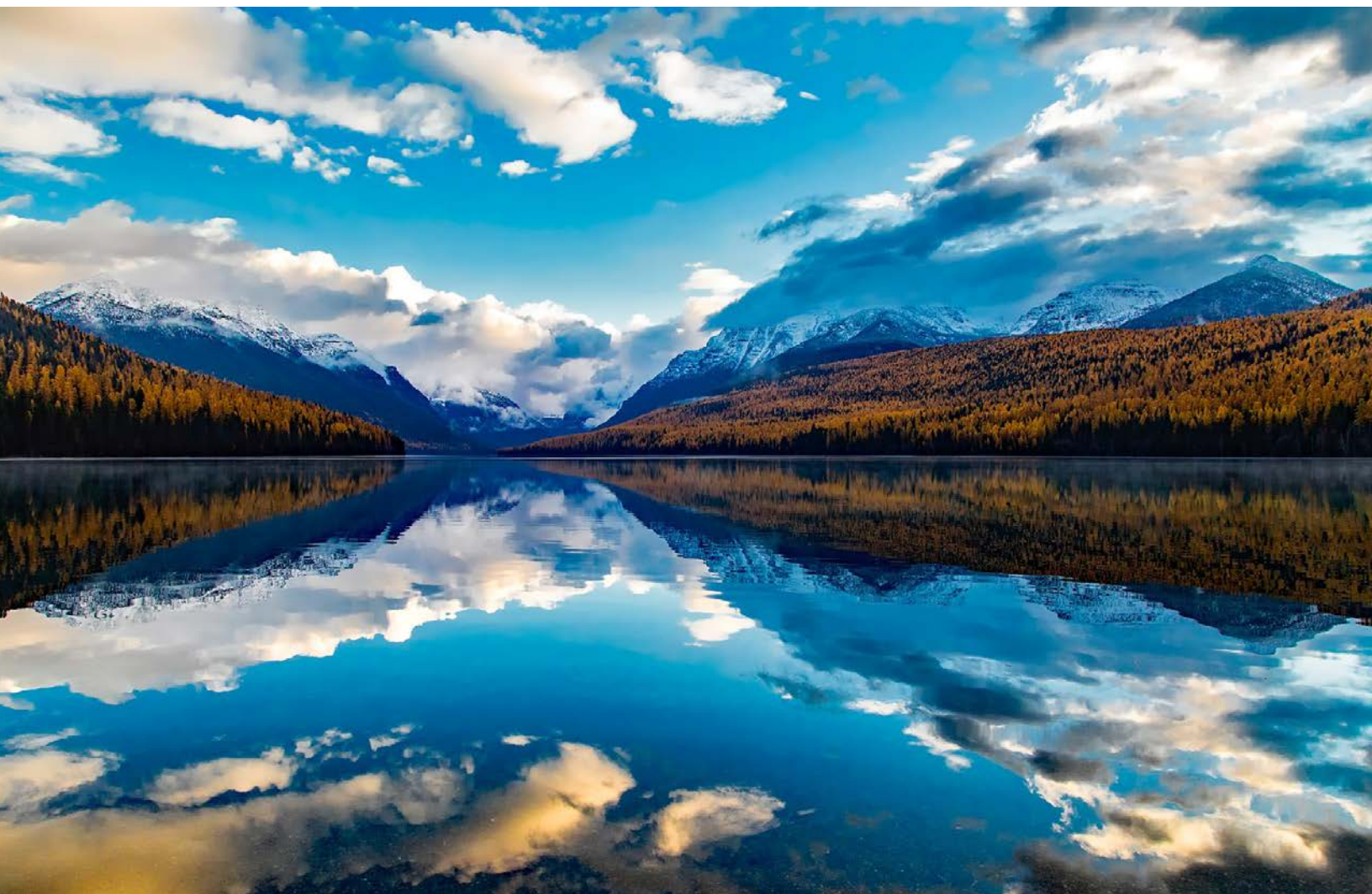
The 2011 Montana Legislature, through HB 334, provided for the termination of medical benefits 60 months from the date of injury or occupational disease (OD) for claims with dates of injury or OD on or after July 1, 2011. The termination does not apply to injured workers who are determined to be permanently totally disabled; receive care for the repair or replacement of a prosthesis; or to medical benefits settled or closed by agreement or by a court order (§39-71-717, MCA).

The Legislature also provided a petition process for an injured worker to continue or reopen their medical benefits if they require the benefits to stay at work or to return to work (§39-71-717, MCA). As of April 2016 there were 58 petitions filed with the department and of those 28 were approved for reopening, 13 denied, 11 without a determination as of yet, and 6 dismissed.

# Appendices

- Definitions
- Data Sources
- Resources

## Section 7



## DEFINITIONS

Depending on the type of claim and benefit reporting issues, a claim may not be reported or receive benefits until two or more years after the date of injury or illness. These charts, then, should not be construed to represent the duration of claims.

**Calendar Year:** The year beginning January 1st and ending December 31st.

**Cause of Injury Code:** The code that corresponds to the cause of injury or occupational disease. Maintained by the Workers' Compensation Insurance Organizations (WCIO), the cause of injury major groupings are:

- **Burn, Hot/Cold exposures** – Contact With: Chemicals, hot objects or substances, temperature extremes, fire or flame, steam or hot fluid, dust, gases, fumes or vapors, welding operation, radiation, cold objects or substances, abnormal air pressure, or electrical current.
- **Caught In, Under or Between:** Machine or machinery, object handled, caught in, under or between, or collapsing materials (slides of earth).
- **Fall, Slip, Trip:** From different level (elevation), from ladder or scaffolding, from liquid or grease spills, into openings, on same level, slip or trip did not fall, fall slip or trip, on ice or snow, or on stairs.
- **Motor Vehicle:** Crash of water vehicle, crash of rail vehicle, collision or sideswipe with another vehicle, collision with a fixed object, crash of airplane, vehicle upset, or motor vehicle.
- **Puncture, Cut, Scrape:** Broken glass, hand tool, utensil; not powered, object being lifted or handled, powered hand tool, appliance, or cut, puncture, scrape.
- **Strain:** Continual noise, twisting, jumping or leaping, holding or carrying, lifting, pushing or pulling, reaching, using tool or machinery, strain or injury, wielding or throwing, or repetitive motion.
- **Striking Against or Step On:** Moving part of machine, object being lifted or handled, sanding, scraping, cleaning operation, stationary object, stepping on sharp object, or striking against or stepping on.
- **Struck By Object:** Fellow worker, patient or other person, falling or flying object, hand tool or machine in use, motor vehicle, moving parts of machine, object being lifted or handled, object handled by others, struck or injured, animal or insect, or explosion or flare back.
- **Miscellaneous Causes:** Absorption, ingestion, or inhalation, foreign matter (body) in eye(s), natural disasters, and person in act of a crime, other than physical cause of injury, mold, terrorism, cumulative, gunshot, or other miscellaneous.

**Employment Relations Division (ERD):** ERD is part of the Department of Labor & Industry. The Division provides a wide variety of service and regulation related to the employer – employee relationship. This includes issues involving workers' compensation coverage and claims, human rights claims, workplace safety and health, wage and hour claims, prevailing wage claims, and public sector collective bargaining.

**Extra-Territorial Reciprocal Agreement:** A formal agreement between two states which allows employers temporarily doing business away from their home state to utilize their workers' compensation coverage in the other state, without needing to purchase additional coverage. When an agreement is in effect with another state, it allows for employers with workers from that state to work in Montana on a temporary basis without purchasing Montana coverage. It in turn allows Montana employers with workers to temporarily do business in the other state without purchasing that state's required coverage. The ERD Workers' Compensation Regulations Bureau oversees extra-territorial reciprocal agreements with Washington, Oregon, Idaho, Wyoming, Utah, and North & South Dakota.

**Fiscal Year:** The State of Montana's fiscal year begins July 1st and ends June 30th of the following year. (Example: 07/01/15 - 06/30/16 = FY16)

## DEFINITIONS

### **First Report of Injury and Occupational Disease**

**(FROI):** The initial report designed to notify parties of the occurrence of an injury or occupational disease. The FROI contains basic claim information about the worker, accident, employer and insurer. It is completed and submitted to ERD by employees, employers or insurers. The Annual Report includes information on all injuries and occupational diseases reported to ERD; however, all injuries and occupational diseases that occurred in Montana may not have been reported.

**Indemnity Benefits:** Any payment made directly to the worker (or the worker's beneficiaries), other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging. ARM 24.29.4303 (4)

**Independent Medical Review (IMR):** A physician, injured worker, insurer or injured worker representative may request an IMR by the Department's medical director for medical treatment denied by the insurer, prior to mediation under 39-71-2401, MCA. The medical director will review the medical records of the injured worker and other information relevant to the denial and issue a recommendation. The medical director is the specific individual designated by the Department to serve as the medical director with respect to a given set of disputed treatments or procedures. The medical director's review and recommendation is an informal alternative dispute resolution process without administrative or judicial authority and is not binding on the parties.

**Industry:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS codes are grouped into different industrial divisions. The following is a list of examples of each division:

- **Accommodation and Food Services:** This sector is comprised of establishments providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption. The sector includes both establishments because the two activities are often combined at the same establishment.
- **Administrative and Support and Waste Management and Remediation Services:** This sector is comprised of establishments performing routine support activities for the day-to-day operations of other organizations. These essential activities are often undertaken in-house by establishments in many sectors of the economy. The establishments in this sector specialize in one or more of these support activities and provide these services to clients in a variety of industries and, in some cases, to households. Activities performed include: office administration, hiring and placing of personnel, document preparation and similar clerical services, solicitation, collection, security and surveillance services, cleaning, and waste disposal services.
- **Agriculture, Forestry, Fishing and Hunting:** This sector is comprised of establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitats.
- **Arts, Entertainment, and Recreation:** This sector includes a wide range of establishments that operate facilities or provide services to meet varied cultural, entertainment, and recreational interests of their patrons. This sector comprises (1) establishments that are involved in producing, promoting, or participating in live performances, events, or exhibits intended for public viewing; (2) establishments that preserve and exhibit objects



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and sites of historical, cultural, or educational interest; and (3) establishments that operate facilities or provide services that enable patrons to participate in recreational activities or pursue amusement, hobby, and leisure-time interests.

- **Construction:** This sector is comprised of establishments primarily engaged in the construction of buildings or engineering projects (e.g., highways and utility systems). Establishments primarily engaged in the preparation of sites for new construction and establishments primarily engaged in subdividing and for sale as building sites also are included in this sector.
- **Educational Services:** This sector is comprised of establishments that provide instruction and training in a wide variety of subjects. This instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers. These establishments may be privately owned and operated for profit or not for profit, or they may be publicly owned and operated. They may also offer food and/or accommodation services to their students.
- **Finance and Insurance:** This sector is comprised of establishments primarily engaged in financial transactions (transactions involving the creation, liquidation, or change in ownership of financial assets) and/or in facilitating financial transactions.
- **Health Care and Social Assistance:** This sector is comprised of establishments providing health care and social assistance for individuals. The sector includes both health care and social assistance because it is sometimes difficult to distinguish between the boundaries of these two activities. The industries in this sector are arranged on a continuum starting with those establishments providing medical care exclusively, continuing with those providing health care and social assistance, and finally finishing with those providing only social assistance. The services provided by establishments in this sector are delivered by trained professionals. All industries in the sector share this commonality of process, namely, labor inputs of health practitioners or social workers with the requisite expertise. Many of the industries in the sector are defined based

on the educational degree held by the practitioners included in the industry.

- **Information:** This sector is comprised of establishments engaged in the following processes: (1) producing and distributing information and cultural products, (2) providing the means to transmit or distribute these products as well as data or communications, and (3) processing data.
- **Management of Companies and Enterprises:** This sector is comprised of (1) establishments that hold the securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest or influencing management decisions or (2) establishments (except government establishments) that administer, oversee, and manage establishments of the company or enterprise and that normally undertake the strategic or organizational planning and decision making role of the company or enterprise. Establishments that administer, oversee, and manage may hold the securities of the company or enterprise.
- **Manufacturing:** This sector is comprised of establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is considered manufacturing, except in cases where the activity is appropriately classified Construction.
- **Mining, Quarrying, and Oil and Gas Extraction:** This sector is comprised of establishments that extract naturally occurring mineral solids, such as coal and ores; liquid minerals, such as crude petroleum; and gases, such as natural gas. The term mining is used in the broad sense to include quarrying, well operations, beneficiating (e.g., crushing, screening, washing, and flotation), and other preparation customarily performed at the mine site, or as a part of mining activity.

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- **Other Services (except Public Administration):**

This sector is comprised of services not specifically provided for elsewhere in the classification system. Establishments in this sector are primarily engaged in activities such as equipment and machinery repairing, promoting or administering religious activities, grant making, advocacy, and providing dry-cleaning and laundry services, personal care services, death care services, pet care services, photofinishing services, temporary parking services, and dating services.

- **Professional, Scientific, and Technical Services:**

This sector is comprised of establishments that specialize in performing professional, scientific, and technical activities for others. These activities require a high degree of expertise and training. The establishments in this sector specialize according to expertise and provide these services to clients in a variety of industries and, in some cases, to households. Activities performed include: legal advice and representation; accounting, bookkeeping, and payroll services; architectural, engineering, and specialized design services; computer services; consulting services; research services; advertising services; photographic services; translation and interpretation services; veterinary services; and other professional, scientific, and technical services.

- **Public Administration:** This sector consists of establishments of federal, state, and local government agencies that administer, oversee, and manage public programs and have executive, legislative, or judicial authority over other institutions within a given area. These agencies also set policy, create laws, adjudicate civil and criminal legal cases, provide for public safety and for national defense. In general, government establishments in the Public Administration sector oversee governmental programs and activities that are not performed by private establishments. Establishments in this sector typically are engaged in the organization and financing of the production of public goods and services, most of which are provided for free or at prices that are not economically significant.

- **Real Estate and Rental and Leasing:** This sector is comprised of establishments primarily engaged in renting, leasing, or otherwise allowing the use of tangible or intangible assets, and establishments providing related services. The major portion of this sector comprises establishments that rent, lease, or otherwise allow the use of their own assets by others. The assets may be tangible, as is the case of real estate and equipment, or intangible, as is the case with patents and trademarks.

- **Retail Trade:** This sector is comprised of establishments engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise.

- **Transportation and Warehousing:** This sector includes industries providing transportation of passengers and cargo, warehousing and storage for goods, scenic and sightseeing transportation, and support activities related to modes of transportation. Establishments in these industries use transportation equipment or transportation related facilities as a productive asset. The type of equipment depends on the mode of transportation. The modes of transportation are air, rail, water, road, and pipeline.

- **Utilities:** This sector is comprised of establishments engaged in the provision of the following utility services: electric power, natural gas, steam supply, water supply, and sewage removal. Within this sector, the specific activities associated with the utility services provided vary by utility: electric power includes generation, transmission, and distribution; natural gas includes distribution; steam supply includes provision and/or distribution; water supply includes treatment and distribution; and sewage removal includes collection, treatment, and disposal of waste through sewer systems and sewage treatment facilities.

- **Wholesale Trade:** This sector is comprised of establishments engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. The merchandise described in this sector includes the outputs of agriculture, mining, manufacturing, and certain information industries, such as publishing.



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**International Association of Industrial Accident Boards and Commissions (IAIABC):** The IAIABC is a not-for-profit trade association representing government agencies charged with the administration of workers' compensation systems throughout the United States, Canada, and other nations and territories. The IAIABC represents workers' compensation professionals, medical providers, insurers, and corporate agencies with 60 jurisdictions and over 150 associate corporate members. Working groups standardize reporting of workers' compensation data. Standards have been developed for communicating data electronically through Electronic Data Interchange (EDI).

**Mediation Benefit Issues:** Disputes are identified by detailed subjects or issues. Multiple issues may be identified for a single dispute. The issues are categorized as follows:

- **Medical Benefits:** Includes medical treatment, domiciliary care entitlement, travel expenses, choice of treating physician, re-authorization of medical services, chiropractic treatment, co-payments, medical benefit rates, and miscellaneous medical issues.
- **Wage Loss Benefits:** Includes TTD, TPD, PPD, and PTD benefits.
- **Relatedness:** Includes issues of aggravation, subsequent injury, heart attack, psychological conditions, and others.
- **Injury/Occupational Requirement:** Disputes concerning whether a medical condition meets the legal definition of injury and occupational disease; disputes over whether a medical condition arises within the course and scope of employment.
- **Access to Records:** Disputes or delays in obtaining claim file records and/or related medical records.
- **Notice/Filing Time:** Includes disputes over statutory notice to employer and timely filing of the claim.
- **Course & Scope:** Center on whether or not the injured worker was within the performance of his/her employment at the time of the event; and if the injury or OD arose out of that employment. There are many varied scenarios within this category.
- **Employment/Insurance Coverage:** Consist of disputes over employment, coverage, and responsible insurer.
- **Rehab Benefits:** Disputes over retraining benefits and assistance with job placement, for all dates of injury.
- **Calculation of Wages:** Disputes involving non-monetary compensation, concurrent wages, and appropriate wage periods. (Wages are used for calculation of compensation rates.)
- **Other:** Includes a variety of less frequently disputed issues, the most common of which are other refusal or delay, lump sum payment disputes, death benefits, and reopening settlements.

**Medical Benefits:** Payments for hospitals, physicians, health care providers, prescriptions, and other medical care costs associated with a claim for benefits.

**Montana Code Annotated (MCA):** The definitive guide to Montana laws, consisting of the Constitution, codes and statutes. The MCA is normally published each odd numbered year incorporating changes made by the Legislative session of that year.

**Nature of Injury Code:** The code that corresponds to the nature of the injury or occupational disease. Maintained by WCIO, the nature of injury major groupings are:

- **All Other Claims, Not Otherwise Classified (NOC):** Includes asphyxiation, loss of circulation, infection, concussion, heart problems, vision loss, hearing loss, poisoning, fainting, no physical or psychological injuries; includes all records where nature code was reported as "unclassified", the code was not reported on the First Report of Injury, or the code could not be converted to IAIABC codes.
- **Amputation:** Includes loss of a limb that involves bone, loss of part of an organ, enucleation or severance of a body part.
- **Bruise or Swelling:** Includes contusions, broken blood vessels and inflammation.
- **Burn or Exposure:** Includes electrical shocks, chemical burns, temperature extremes, freezing, sunburns, heat stroke and lightning.

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- **Cut or Abrasion:** Includes slivers, lodged small objects, open wounds, scrapes and needle sticks.
- **Fracture:** Includes any breaking of a bone.
- **Multiple Injuries:** Involves more than one Nature of Injury Code.
- **Occupational Disease:** Includes repetitive motion, loss of hearing or sight, respiratory conditions, poisoning, mental disorders, radiation, heart disease, cancer, AIDS, carpal tunnel and any disease resulting from work related experiences.
- **Sprain or Rupture:** Includes strains, dislocations, hernias, organ ruptures and trauma to joints or muscles.

**Other Benefit Codes:** Codes that identify the type of other benefits paid to date or recovered for an injury or occupational disease. The following are IAIABC definitions for the codes used in this report:

- **Hospital Costs Paid to Date:** Sum of costs of both inpatient and outpatient services.
- **Other Medical Paid to Date:** Sum of medical costs to other providers not included in payments to physicians or hospital costs, i.e. laboratory tests, prescriptions.
- **Pharmaceutical Paid to Date:** Sum of medication payments.
- **Total Payments to Physicians Paid to Date:** Sum of services paid to physicians.

**Part of Body Code:** The code which corresponds to the part of body to which the employee sustained injury or occupational disease. Maintained by WCIO, the code definitions for part of body major groups are:

- **All Other Claims, NOC:** Includes all records where the part of body code was reported as “unclassified”, the code was not reported on the First Report of Injury, or the code could not be converted to IAIABC codes.
- **Back:** Includes the upper and lower back, disc, or lumbar and sacral vertebrae.
- **Head:** Includes multiple head injuries, skull, brain, ears, eyes, nose, teeth, mouth, soft tissue or facial bones.
- **Knee:** Includes the patella (kneecap) and supporting ligaments.

- **Lower Extremities:** Includes multiple lower extremities, hip, upper leg, lower leg, ankle, foot and toe.
- **Multiple Body Parts:** Includes artificial appliances, multiple body parts or body systems.
- **Neck:** Includes multiple neck injuries, vertebrae, disc, spinal cord, larynx, soft tissue or trachea.
- **Trunk:** Includes multiple trunk injuries, disc, chest, sacrum and coccyx, pelvis, spinal cord, internal organs, heart, lungs, abdomen (including groin) and buttocks.
- **Upper Extremities:** Includes multiple upper extremities, upper arm, elbow, lower arm, fingers, thumb and shoulders.
- **Wrist:** Includes hand and wrist or just wrist injuries.

**Occupational Disease (OD):** Harm or damage caused by work-related events that occur on more than a single day or work shift. It includes acute chronic illnesses or diseases caused by inhalation, absorption, ingestion or overuse syndrome.

**Occupational Injury:** Internal or external physical harm to the body that is established by objective medical findings, caused by a specific work accident on a single day or during a single work shift.

**Permanent Partial Disability (PPD):** Permanent impairment resulting from an injury or occupational disease, after achieving maximum medical improvement, that impairs the worker's ability to work and causes an actual wage loss. PPD benefits are calculated using 66 2/3% of the wages received at the time of injury, not to exceed one-half the state's average weekly wage at the time of injury. Maximum length for PPD benefits is determined by the date of injury.

**Permanent Total Disability (PTD):** A physical condition resulting from an injury or occupational disease, after achieving maximum medical improvement, in which the worker has no reasonable prospect of physically performing regular employment. PTD benefits are calculated using 66 2/3% of the wages received at the time of injury, not to exceed the state's average weekly wage at the time of injury. The injured worker may receive cost of living increases.

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**Plan Type:** The type of workers' compensation insurance coverage chosen by an employer. There are three different types of insurance plans:

- **Plan 1:** Self-insurance provided by employers who have sufficient financial strength to cover potential workers' compensation claims. If an injury occurs, a self-insured employer will pay the expenses and benefits.
- **Plan 2:** Insurance coverage provided by a private insurance company.
- **Plan 3:** Insurance coverage provided by Montana State Fund.

**Professional Employer Organizations (PEO):**

Professional Employer Organizations provide human resource services for small to medium size businesses. Examples of services provided by PEO's are staffing, securing unemployment and workers' compensation insurance, and handling payroll taxes and medical benefits. PEO's must be authorized by ERD prior to contracting with any client employers.

**Subsequent Report of Injury (SROI):** The SROI is completed for each individual claim with indemnity benefits and is submitted to ERD by adjusters or insurers on every six-month anniversary of the date of injury, until the claim is closed or additional compensation or medical payments are not anticipated. The form includes claimant identification information, status of the claim, type of benefits paid and benefits payment amounts. The Annual Report includes data reported to ERD on injury and occupational disease indemnity claims. SROIs may not have been submitted to ERD for all indemnity claims.

**Temporary Partial Disability (TPD):** A physical condition resulting from an injury or occupational disease, prior to achieving maximum medical improvement, that causes a partial loss of wages. TPD benefits are the difference between the injured worker's actual weekly wage and the actual weekly wage earned during the injured worker's temporary partial disability. They are subject to a maximum of 40 hours per week and capped at the injured worker's Temporary Total Disability rate.

**Temporary Total Disability (TTD):** A physical condition resulting from an injury or occupational disease, prior to achieving maximum medical improvement that causes a total loss of wages. TTD benefits are calculated using 66 2/3% of the wages received at the time of injury, not to exceed the state's average weekly wage at the time of injury.

**Uninsured Employers' Fund (UEF):** Enforces workers' compensation coverage requirements for all employers, and pays benefits to injured workers whose employers do not have coverage.

**Utilization and Treatment Guidelines (Montana Guidelines):**

The DLI was required by statute to implement guidelines for workers' compensation medical treatments. The Montana Guidelines are based on the existing Colorado Workers' Compensation Medical Treatment Guidelines, supplemented with the ACOEM Guidelines, for use in Montana. The purpose of the Montana Guidelines is to assist injured workers in receiving prompt and appropriate care, assist injured workers in stay-at-work/return-to-work options, assist clinicians in making decisions for specific conditions, and help insurers make reimbursement determinations. Montana Guidelines are enforceable for payment purposes. The DLI recognizes that acceptable medical practice may include deviations from the guidelines and that the Montana Guidelines are not relevant as evidence of a provider's legal standard of professional care.

The Montana Guidelines are applicable to all medical services provided on or after July 1, 2011 and establish a presumption of compensability for injuries and occupational diseases occurring on or after July 1, 2007. For those injuries or occupational diseases occurring on or before June 30, 2007, treatment in accordance with the Montana Guidelines constitutes reasonable primary or secondary medical treatment.

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**Vocational Rehabilitation Benefits:** Benefits paid to the injured worker at the worker's TTD rate. The benefits are paid for the period specified in the job placement or retraining plan, not to exceed 104 weeks. The plan is prepared by the rehabilitation provider and agreed to by the insurer and injured worker.

**Wage Loss Benefits:** TTD, TPD, PTD, and PPD benefits paid to the injured worker.

**Workers' Compensation Insurance Organizations (WCIO):** A voluntary association of statutorily authorized or licensed rating, advisory or data service organizations that collect workers compensation insurance information in one or more states. The WCIO is composed of the managers of the various boards and jurisdictions. The purpose of the WCIO is to provide a forum for the exchange of information about workers' compensation insurance.

## DATA SOURCES

### **Department of Labor and Industry**

- Workers' Compensation Claims Assistance Bureau;
- Workers' Compensation Regulations Bureau;
- Safety and Health Bureau; and
- Hearings Bureau

### **Quarterly Expenditure Reports**

- Totals of compensation, medical, and miscellaneous expenses reported to the DLI by carriers.

### **Quarterly Census of Employment and Wages, Bureau of Labor Statistics, US Department of Labor**

### **Regulatory Costs and Industrial Accident Rehabilitation Trust Fund Expenses**

- Costs obtained from the State's Accounting, Budgeting, and Human Resource System (SABHRS).

### **Unemployment Insurance Tax System for Leased Employees**

### **Workers' Compensation Court**

### **Workers' Compensation Database (WCAN)**

- Employers, insurers, claimants, attorneys, medical providers and other parties of the workers' compensation community in Montana provide data for the system. Employment Relations Division (ERD) maintains the database.
- The data is as accurate as reported to the ERD and does not include reserves. Payment data on individual medical-only claims is not reported to ERD. Counts and totals may change over time due to updated reports and data clean-up efforts. Federal workers' claims are not represented in this report.

## RESOURCES

### WEBSITE

This report, previous reports, and other special reports are available on the Internet at the following web site: [dli.mt.gov](http://dli.mt.gov)

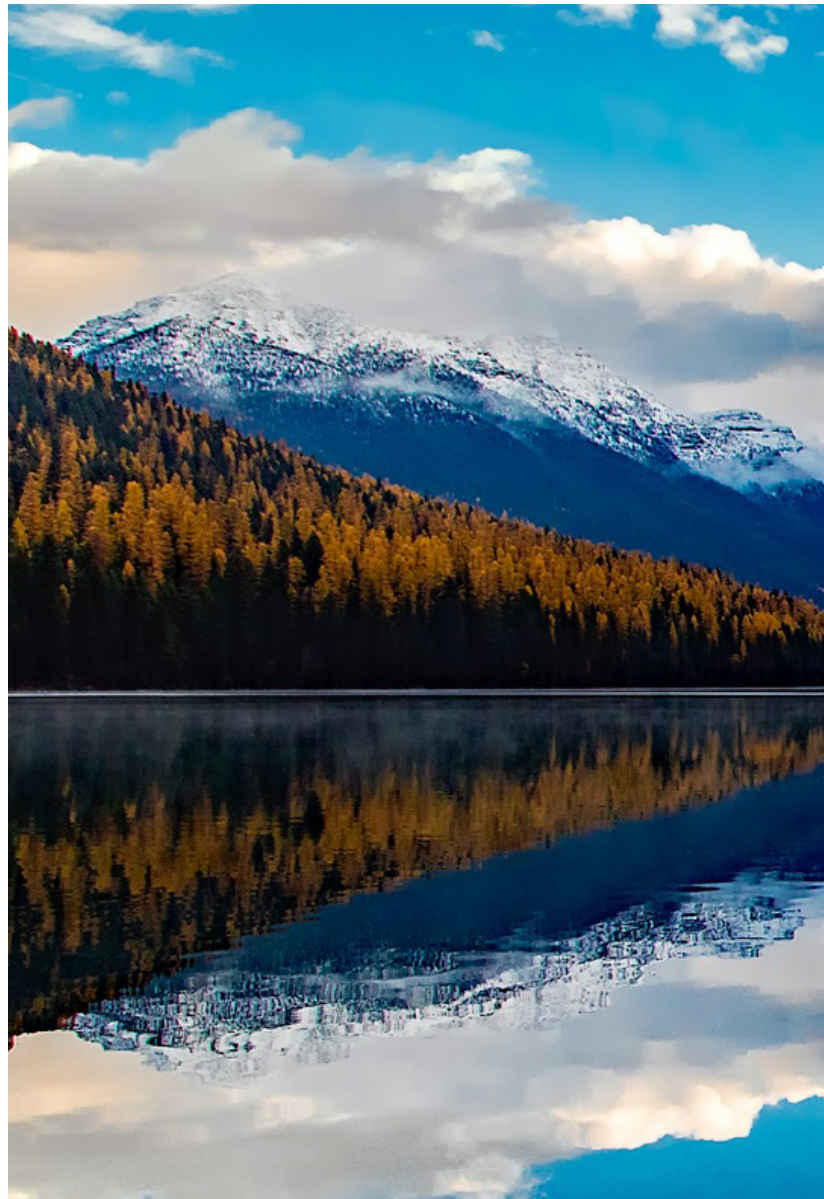
To request a copy of the Annual Report, Attorney Fee Supplement, or special studies, please contact Kristine Ediger by phone: 406-444-1675 or e-mail: [kediger@mt.gov](mailto:kediger@mt.gov).

### PLANNING TEAM

The Annual Report planning team consisted of the following ERD staff:

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